92-1451

No. ____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., and
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), and *Langenkamp v. Culp*, 498 U.S. 42 (1990), a preference-action defendant is entitled to adjudication by an Article III court and, unless the preference is being litigated as part of the equitable claims-allowance process that the defendant invoked by filing a claim against the bankruptcy estate, is also entitled to a jury trial. The questions presented are:

1. whether a preference action is part of the equitable claims-allowance process in which there is no right to a jury when the defendant, who is not a creditor and has no claim against the bankruptcy estate, has filed a proof of claim form to protect its right to assert the claim that will arise only if it loses the preference action itself; and

2. whether, even if a jury is unavailable, the rights at issue nevertheless remain private so that the preference-action defendant continues to have a right to adjudication by an Article III court.

LIST OF PARTIES AND RULE 29.1 LISTING

The names of all parties appear in the caption of the case. Petitioner Travellers International AG. is a Swiss corporation. It is a wholly owned subsidiary of Windsor, Inc., a privately held Missouri corporation, all of whose subsidiaries and affiliates are wholly owned.

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Travellers International AG. petitions for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the court of appeals denying Travellers' petition for a writ of mandamus is reprinted in the appendix hereto at 1a-11a and is reported at 982 F.2d 96. The court's order denying petitioner's motion for rehearing and suggestion for rehearing in banc (28a) is unreported, as is the opinion of the district court that gave rise to the petition for a writ of mandamus (12a-24a) and the opinion of the bankruptcy court (26a-27a).

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 1651. The court of appeals' judgment was entered on December 28, 1992. Travellers' timely petition for rehearing was denied on January 19, 1993.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues presented by this petition implicate the following provisions of the Constitution of the United States.

The Seventh Amendment:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 1 of Article III:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Clause 4 of Section 8 of Article I:

> The Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.

The issues presented also implicate 28 U.S.C. § 157, which is reproduced in the appendix at 42a-44a.

STATEMENT OF THE CASE

Petitioner Travellers International AG. is the defendant in an adversary proceeding in which respondent Trans World Airlines, Inc., the debtor in a chapter 11

bankruptcy case, seeks to recover $13.7 million deposited as security for Travellers' pre-petition judgment against the debtor pending appeal. Travellers moved in the district court to have the proceeding withdrawn from the bankruptcy court on the grounds that it is entitled to a jury trial, which the bankruptcy court cannot conduct, and that the private rights at issue cannot in any event by adjudicated by a non-Article III court. The district court denied the motion, and the court of appeals, following briefing and oral argument, denied Travellers' petition for a writ of mandamus, both courts concluding that Travellers had foregone the right to such relief by filing a protective proof of claim form with the bankruptcy court.

1. On October 22, 1991, Travellers obtained a $12.3 million judgment against TWA in a contract action in the United States District Court for the Southern District of New York.[1] TWA obtained a stay of execution pending appeal on November 4, 1991 by depositing $13.7 million in cash with the clerk of the district court as security for the judgment. On January 31, 1992, TWA filed a petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Thereafter, TWA, as debtor-in-possession, filed an adversary proceeding, pursuant to 28 U.S.C. § 1334, against Travellers, which was referred to the bankruptcy court in accordance with 28 U.S.C. § 157(a).

In the adversary proceeding, TWA seeks an order under 11 U.S.C. § 547 declaring that the cash deposit is a voidable preference and that Travellers has no rights therein; alternatively, TWA seeks an order under 11 U.S.C. § 542 declaring that the cash deposit is property of, and should be turned over to, the estate. Amended

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[1] *Travellers Int'l AG. v. Trans World Airlines, Inc.*, No. 88 Civ. 1484 (RJW) (S.D.N.Y.), *appeal docketed*, No. 91-9250 (2d Cir. Dec. 2, 1991).

Complaint, C.A. App. 1.[2] In its answer, Travellers disputes the claims on the merits, denies that the bankruptcy court has jurisdiction, and demands a jury trial. C.A. App. 10.[3]

2. Thereafter, in an April 1992 Notice of Bar Date for Filing Proofs of Claim (30a-37a), the bankruptcy court declared that any person failing to file a proof of claim by May 15, 1992 would be barred from asserting any claim against TWA. The notice, drafted by TWA, stated that a proof of claim must be filed to preserve claims listed in TWA's schedules of liabilities as disputed, unliquidated or contingent (32a), and expressly advised Travellers that TWA's schedules "classify[] your claim as disputed, unliquidated or contingent" (37a).

Travellers completed the proof of claim form that accompanied the notice and filed it on May 14 (39a-41a). In that form, Travellers explains that its current claim for $13 million, consisting of the amount of its judgment plus accrued interest, is against, and secured by, the $13.7 million cash deposit (40a). Travellers' form further explains that

> [t]he collateral is subject to the debtor's pending claim to recover the cash deposit in an adversary proceeding filed by debtor . . . . Should debtor prevail in the adversary proceeding, this claim would be an unsecured nonpriority claim [against the bankruptcy estate] (41a).

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[2] Respondent Official Unsecured Creditors' Committee intervened as a plaintiff. Its complaint is essentially identical to TWA's amended complaint.

[3] On the merits of TWA's claims, Travellers denies that the November 4 deposit was the relevant "transfer" and denies that TWA can establish, as it must under its preference claim, that it was insolvent on that date. On TWA's alternative claim, Travellers disputes that the cash held as security by the clerk is property of the estate.

Finally, Travellers stated that by submitting the proof of claim form, it did not waive its demand for a jury trial in the adversary proceeding (40a).

3. On July 15, 1992, Travellers filed a motion, under 28 U.S.C. § 157(d), asking the district court to withdraw the adversary proceeding from the bankruptcy court, which the district court (respondent Sue L. Robinson, J.) denied by Memorandum Opinion and Order dated August 27, 1992 (12a-25a).[4] With respect to Travellers' contention that it has a right to a jury trial, the court reasoned that even though Travellers is not a creditor of the bankruptcy estate and therefore need not have filed a claim against the estate, by filing the proof of claim form described above Travellers subjected itself to the bankruptcy court's equitable power for all purposes (20a). With respect to the contention that Travellers' rights cannot in any event be adjudicated by a non-Article III court, the court reasoned that although the subject dispute might have had its origins in wholly private rights, those rights had been adjudicated in Travellers' New York contract action, leaving only a proceeding for the avoidance of a preferential transfer and retrieval of assets for the estate, which "could arise only in the context of a bankruptcy case" and thus could be adjudicated by a non-Article III court (23a).

4. Pursuant to 28 U.S.C. § 1651(a), Travellers petitioned the court of appeals for a writ of mandamus directing the district court to withdraw the adversary proceeding and conduct a jury trial. In its December 28, 1992 opinion denying the petition (1a-11a), the court of appeals acknowledged that Travellers' claim was contingent on TWA prevailing in its preference action and that

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[4] In accordance with the district court's procedure, Travellers' motion to withdraw was initially submitted to the bankruptcy court for determination whether the adversary proceeding was core or non-core under 28 U.S.C. § 157(b). That court determined that both claims were core proceedings (26a-27a).

its proof of claim was filed for protective purposes only. The court concluded nonetheless that Travellers was a creditor of the bankruptcy estate and held that "[w]here, as in this case, a creditor has filed a claim, even though the claim is couched in protective language and is contingent, that creditor has submitted to the bankruptcy court's equitable jurisdiction and waived any Seventh Amendment right to a jury trial" (10a), and to adjudication before an Article III tribunal (10a n.5). The court found it unnecessary to consider whether bankruptcy courts may conduct jury trials (*id.*).

REASONS FOR GRANTING THE WRIT

The court of appeals held that petitioner—a preference-action defendant who is not in fact a creditor and does not have a claim against the bankruptcy estate—waived both its right to adjudication in an Article III court and its right to a jury trial by submitting a proof of claim form to preserve its right to assert the claim that will arise if the allegedly preferential transfer is avoided. As demonstrated below, this holding (i) conflicts with this Court's decisions, (ii) conflicts with decisions of other courts of appeals, and (iii) distorts constitutional jurisprudence in a manner that will permit a defendant's Seventh Amendment and Article III rights to be circumvented in every preference action.

I. THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT.

In *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), the Court held that since the rights at issue in a preference action are private in nature, the defendant is entitled to adjudication by an Article III court and, unless the defendant has submitted a claim against the bankruptcy estate, a preference action is usually legal, rather than equitable, in nature and the defendant is

entitled to a jury trial. In *Langenkamp v. Culp*, 498 U.S. 42, 111 S. Ct. 330 (1990), in which Article III was not raised, the Court confirmed that if a creditor invokes the equitable claims-allowance process by submitting a claim against the bankruptcy estate, any preference action against that creditor becomes a part of that equitable process to which the right to a jury trial is inapplicable. In its decision, the court of appeals deviated radically from the teachings of these cases.

A. In Holding that Travellers Had Waived Its Right to a Jury Trial, the Court of Appeals Applied Doctrine Rejected by this Court and Failed to Address Critical Issues Required by this Court's Decisions.

This Court has consistently held that the Seventh Amendment right to trial by jury in actions at law is fully applicable to preference actions. Unless the plaintiff seeks solely equitable relief, a preference action is an action at law and the defendant may insist on trial by jury. *Granfinanciera; Katchen v. Landy*, 382 U.S. 323 (1966); *Schoenthal v. Irving Trust Co.*, 287 U.S. 92 (1932). Since the right to jury trial is inapplicable to equitable actions, however, there is no right to a jury trial when the preference action is litigated as part of the equitable process of allowing or disallowing claims against the bankruptcy estate. *Langenkamp*, 498 U.S. at ——, 111 S. Ct. at 331; *Granfinanciera*, 492 U.S. at 57-58; *Katchen*, 382 U.S. at 336.

The claims-allowance process is not implicated here. Travellers seeks nothing from the estate. Its judgment against TWA is fully secured by the cash on deposit with the clerk of court, which is manifestly not part of the bankruptcy estate.[5] Travellers will seek to participate in

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[5] If such a deposit were property of the estate, it could not serve its purpose of securing an appellee's judgment pending appeal. A security interest in money is valid only so long as the funds are in the possession or constructive possession of the secured party. UCC

the estate only if TWA retrieves those funds by prevailing in the preference action. There is thus no claim for the bankruptcy court to allow or disallow unless and until that action is decided in TWA's favor. Travellers' proof of claim form merely notified the bankruptcy court that Travellers would have a claim if it lost the preference action. Since that proof of claim cannot trigger the claims-allowance process until after the preference action has been adjudicated, it cannot affect Travellers' right to a jury trial in that very action.

In concluding that this case is controlled by *Langenkamp*, the court of appeals distorted this Court's decision. In *Langenkamp*, the bankruptcy trustee had filed preference actions against defendants that had redeemed savings certificates during the preference period. Some of the defendants also held unredeemed certificates for which they had filed claims against the bankruptcy estate; the remaining defendants held no unredeemed certificates, and thus they, like Travellers, would have a claim against the estate only if the trustee succeeded in avoiding the allegedly preferential transfers. 498 U.S. at ——, 111 S. Ct. at 330-31. The Court of Appeals for the Tenth Circuit had held that both classes of defendants were entitled to a jury trial. This Court reversed with respect to the defendants who had filed claims against the estate for the unredeemed savings certificates, but expressly approved the Tenth Circuit's decision granting a jury trial to the remaining defendants, whose status as

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§ 9-304(1) (1990); *In re Copeland*, 531 F.2d 1195, 1204 (3d Cir. 1976) ("Where the [UCC] requires perfection by possession of the secured party or his bailee, it is clear that possession by the debtor or an individual closely associated with the debtor is not sufficient . . . ."); *accord* UCC § 9-305 and Official Comment 2. Thus the deposit held by the clerk is beyond the reach of the debtor and cannot be property of the debtor's estate. *Cf., FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 130-31 (2d Cir. 1992) (property subject to statutory avoidance powers is not property of the estate until recovered).

potential creditors was identical to Travellers'. *Id.* at ——, 111 S. Ct. at 331.

Langenkamp thus made clear that a creditor who claims a right to share in the distribution of the bankrupt estate invokes the equitable claims-allowance process in which no jury is required and that any preference action against that creditor becomes a part of that process. This is a reiteration of the principles established in *Granfinanciera* and *Katchen*. Just as it had in *Katchen*, the Court, in *Langenkamp*, denied jury trials in preference actions against defendants who had invoked the claims-allowance process by claiming a right to share in the estate. Just as it had in *Granfinanciera*, however, the Court acknowledged that preference-action defendants who, like Travellers, had not claimed a share of the estate, but who necessarily become claimants if they lose the preference action, are entitled to jury trials.

The court of appeals' decision in this case is wholly inconsistent with *Langenkamp*. Instead of asking whether Travellers had invoked the equitable claims-allowance process by claiming a share of the bankruptcy estate, the court erroneously concluded that Travellers automatically "waived" its right to a jury trial by submitting the proof of claim form regardless of whether Travellers had thereby claimed a right to share in the estate. This Court has, however, rejected the concept of waiver in this context, "because creditors lack an alternatvie forum to the bankruptcy court in which to pursue their claims." *Granfinanciera*, 492 U.S. at 59-60 n.14. The question is not whether the preference-action defendant has done something that constitutes a waiver of its right to a jury trial. Rather it is whether the preference-action defendant has claimed a share of the estate as a creditor and invoked the claims-allowance process in which that jury trial right is inapplicable. Had the court of appeals posed the correct question, it could not have concluded that Travellers, which is not a creditor and has no claim

against the bankruptcy estate, has invoked such a process.[6]

B. In Holding that Travellers Had Waived Its Right to Adjudication in an Article III Court, the Court of Appeals Failed to Address an Important Constitutional Principle.

The court of appeals found that Travellers was not entitled to a trial by an Article III court because it was not entitled to a jury trial. This reasoning misses the point. The legal/equitable distinction that is critical to resolution of the jury trial issue is not dispositive of the Article III issue. Rather, as this Court has made clear, the critical factor in the Article III analysis is whether the rights at stake are public or private in nature. *Granfinanciera*, 492 U.S. at 51-56. Contrary to the court of appeals' perfunctory treatment, this issue raises an important constitutional question.

In *Granfinanciera* the Court determined that preference actions involve the adjudication of private rights, which must be adjudicated by an Article III court. 492 U.S. at 55.[7] The Court's further conclusion—that a pref-

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[6] Referring to "claim" as defined in 11 U.S.C. § 101(5), the court of appeals concluded that "there can be no question that the Supreme Court's definition of 'claim' is the same as the one found in . . . the Bankruptcy Code and includes Travellers' 'protective' claim" (9a-10a). The critical term in this Court's opinions, however, is "claim against the estate." *Langenkamp*, 498 U.S. at ———, 111 S. Ct. at 331; *Granfinanciera*, 492 U.S. at 58 n.13 and 59 n.14. Not every "claim" is "a claim against the estate" that triggers the equitable claims-allowance process in which a jury trial is inapplicable.

[7] Under the *Granfinanciera* analysis, the Seventh Amendment requires a jury trial only if the action is both legal in nature *and* "must be tried under the auspices of an Article III court." 492 U.S. at 53-54. Thus the determination that preference actions in the context of a bankruptcy involve private rights, *id.* 55-56, and are legal in nature, *id.* at 57-58, necessarily means, not only that the parties to such actions have a right to a jury trial, but also that they have a right to adjudication by an Article III forum. Ac-

erence action's legal nature implicates the right to a jury trial—becomes irrelevant when the defendant invokes the claims-allowance process and thus subjects what would otherwise be a legal action to adjudication in that equitable process. Unless that event—the invocation of the claims-allowance process—also converts the rights at issue from private to public, however, it does not affect the defendant's right to adjudication by an Article III court.

The court of appeals' reliance on *Langenkamp* in this regard (10a n.5) is erroneous. Article III was neither raised nor addressed in *Langenkamp*, which merely reiterated that the right to trial by jury is inapplicable to the equitable process that is invoked when a creditor files a claim against the bankruptcy estate. In light of this Court's previous guidance on Article III in the bankruptcy context, the critical question is whether Travellers' protective proof of claim somehow converted the private rights at issue into public rights.

For Article III purposes, the status of the preference action at issue here is the same as that of the contract action addressed in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). In that case, the Court established that a non-Article III court cannot adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without the consent of the litigants, and subject only to ordinary appellate review. 458 U.S. at 89-91 (Rehnquist, J., concurring); *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 584 (1985). The Court subsequently, in *Granfinanciera*, held that, like the traditional contract actions addressed in *Marathon*, prefer-

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cordingly, the only issue reserved in *Granfinanciera* with respect to Article III was "whether, if Congress has authorized bankruptcy courts to hold jury trials in such actions, that authorization comports with Article III when non-Article III judges preside over the actions subject to review in, or withdrawal by, the district courts." 492 U.S. at 50. Because of its faulty analysis, the court of appeals failed to reach that issue.

ence actions also involve private rights and must be adjudicated by an Article III court. In other words, the *Granfinanciera* Court gave preference actions the same Article III status ascribed to "contract actions arising under state law" in *Marathon*. Thus when the holding in *Granfinanciera* is combined with that of *Marathon*, it is clear that the Constitution will not permit the current bankruptcy statute to be applied in a manner that vests a non-Article III court with the power to adjudicate, render final judgment, and issue binding orders in a preference action without consent of the litigants, and subject only to ordinary appellate review.[8]

The Article III issue can be avoided, therefore, only if the district court withdraws the adversary proceeding from the bankruptcy judge. The only difference between the current statutory arrangement and the one invalidated on Article III grounds in *Marathon* is the district court's authority to refer cases to and withdraw them from the bankruptcy judge. 28 U.S.C. §§ 157(a) and (d). If, as here, a proceeding is treated as core, referred to the bankruptcy judge under section 157(a), and not withdrawn under section 157(d), the Article III court's only supervision is in the form of "ordinary appellate review." The *judgment* in such a proceeding will be rendered by a non-Article III bankruptcy judge. That, of course, is exactly the arrangement that was struck down as violative of Article III in *Marathon*.[9]

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[8] The debtor's claim that the cash deposit should be turned over to the debtor-in-possession as property of the debtor's estate also involves private rights. *Cf. Harrison v. Chamberlin*, 271 U.S. 191, 194 (1926) (under the Bankruptcy Act of 1898, substantial claims to property held by third parties were not within the bankruptcy courts' summary (non-Article III) jurisdiction).

[9] Thus Congress's decision to vest jurisdiction in the district court, with discretion to refer cases to the bankruptcy judge, prevents the statute from violating Article III on its face. When, as here, however, a party has a right to adjudication in an Article III court, the statute is unconstitutional as applied unless the district

The possibility that the preference action might be litigated without a jury as part of the equitable claims-allowance process does not change the foregoing analysis. As noted, the Court has held that the rights at issue in preference actions are private. And even if Travellers is deemed to have filed a claim against the estate, the rights at issue with respect to that claim—based on a federal judgment resulting from litigation between private parties involving private rights under state contract law—as well as those at stake in TWA's preference action remain wholly private. Just as "legal claims are not magically converted into equitable issues by their presentation to a court of equity," *Ross v. Bernhard*, 396 U.S. 531, 538 (1970), private issues are not converted to public issues by their presentation to a non-Article III court. *Cf. Granfinanciera*, 492 U.S. at 60-61 (Congress cannot defeat the right to a jury trial, which includes a determination that the rights at issue are private in nature, "by relabeling the cause of action . . . and placing exclusive jurisdiction in an administrative agency or a specialized court of equity").[10]

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court exercises its discretion to withdraw the case from the bankruptcy judge.

[10] The court of appeals' cryptic disposition of Travellers' Article III rights also suggests that any matter subject to a court's equity jurisdiction can be adjudicated without regard to the court's Article III status. This notion that the existence of equity jurisdiction somehow eliminates Article III considerations evinces a fundamental misconception. "Equity jurisdiction" refers to the court's power to award equitable (as opposed to legal) remedies in a case over which it otherwise has jurisdiction; it is not an independent basis of jurisdiction. *See, e.g., International Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986); *Schlesinger v. Councilman*, 420 U.S. 738, 754 (1975). The Court has never held that invocation of a court's equitable powers also subjects private rights to adjudication in a non-Article III court. To the contrary, the concept of "equity jurisdiction" actually suggests that the rights at issue cannot be assigned to a non-Article III court. Under section 2 of Article III, "The judicial Power . . . extend[s] to all cases, in Law and Equity arising under this Con-

Because the court of appeals reached the wrong result without even addressing the important constitutional principles involved, its decision, if permitted to stand, will not only deprive litigants in the Third Circuit of their right to adjudication by an independent federal judiciary, it will also seriously distort the juridical debate on Article III.

II. THE COURT OF APPEALS' DECISION IS IRRECONCILABLE WITH DECISIONS OF OTHER CIRCUITS.

The court of appeals' conclusion that Travellers subjected itself to the bankruptcy court's equity jurisdiction by filing a protective proof of claim creates a conflict among the circuits in two respects. First, in contrast to the Third Circuit's decision here, the Tenth Circuit has held that a preference-action defendant does "not have even a contingent right to payment from the debtors' estates" until it loses the preference action, and therefore cannot have a claim against the estate until the preference action is finally adjudicated. *Langenkamp v. Hackler (In re Republic Trust & Sav. Co.)*, 897 F.2d 1041, 1045-46 (10th Cir.), *rev'd on other grounds sub nom. Langenkamp v. Culp*, 498 U.S. 42 (1990), *reaffirmed in relevant part*, 924 F.2d 997 (10th Cir. 1991). Likewise, the Ninth Circuit has held, "Only if the [defendants'] claim of right to retain the funds [sought by the debtor] were resolved adversely to them would it become necessary for them to claim against the bankruptcy estate as creditors." *Dexter v. Gilbert (In re Kirchoff Frozen Foods, Inc.)*, 496 F.2d 84, 86 (9th Cir. 1974).

Second, the Courts of Appeals for the Second and Ninth Circuits have held that proofs of claim filed for protective or defensive purposes do not constitute consent

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stitution [and] the Laws of the United States . . . ." Congress thus cannot assign cases within "equity jurisdiction" to final adjudication by non-Article III forums.

to adjudication by a non-Article III court. *Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159, 161-62 (9th Cir. 1986); *In re Eakin*, 154 F.2d 717, 719 (2d Cir. 1946). In *Dexter v. Gilbert*, *supra*, the Ninth Circuit held that a party's filing to protect the claim that would arise if it lost an action by which the debtor sought to recover funds for the estate "did not constitute consent to [the bankruptcy court's] summary jurisdiction over the issues respecting the [party's] right to retain the funds." 496 F.2d at 86; *accord Dannerbeck v. Palmer*, 502 F.2d 686, 695 (9th Cir. 1974), *cert. denied*, 419 U.S. 1050 (1974).[11]

III. THE COURT OF APPEALS' DECISION PROVIDES A MEANS BY WHICH DEBTORS CAN CIRCUMVENT A DEFENDANT'S SEVENTH AMENDMENT AND ARTICLE III RIGHTS IN EVERY PREFERENCE ACTION.

As noted, the "claim" that was deemed to have resulted in Travellers' loss of its rights under the Seventh Amendment and Article III is the one that will arise only if the debtor avoids the allegedly preferential transfer and recovers the funds set aside to satisfy Travellers' judgment against the debtor. In this respect, Travellers' position is no different from any other defendant in a preference action. Every such defendant will have a

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[11] If Travellers is entitled to a jury trial, that trial must be conducted by an Article III judge, not a bankruptcy judge. *Compare In re Grabill Corp.*, 967 F.2d 1152 (7th Cir. 1992); *In re Baker & Getty Fin. Servs., Inc.*, 954 F.2d 1169 (6th Cir. 1992); *In re Kaiser Steel Corp.*, 911 F.2d 380 (10th Cir. 1990); *In re United Missouri Bank, N.A.*, 901 F.2d 1449 (8th Cir. 1990) (all holding that bankruptcy judges are not authorized to conduct jury trials), *with In re Ben Cooper, Inc.*, 896 F.2d 1394 (2d Cir.) (holding that bankruptcy judges are authorized to conduct jury trials and may constitutionally do so), *cert. granted sub nom. Insurance Co. of Pennsylvania v. Ben Cooper, Inc.*, 497 U.S. 1023, *vacated & remanded on jurisdictional grounds*, —— U.S. ——, 111 S. Ct. 425 (1990), *reinstated*, 924 F.2d 36 (2d Cir.), *cert. denied*, —— U.S. ——, 111 S. Ct. 2041 (1991).

claim if the debtor recovers the property by which it previously satisfied its obligation to that defendant. If Travellers' protective proof of claim is sufficient to defeat its rights to a jury trial in an Article III court, debtors will be able to defeat those rights in every preference action.

In this case, Travellers' proof of claim was filed in response to a claims bar notice that required Travellers to file a proof of claim or risk being barred. If the court of appeals is correct in concluding that such proofs of claim will defeat the defendant's constitutional rights, future debtors need not be so circumspect. The debtor can require every preference-action defendant to file a proof of claim to preserve the right to assert the claim that will arise if the debtor recovers the property by which it satisfied its obligation to the defendant.[12] Or the debtor can file a proof of claim on the defendant's behalf. *See* 11 U.S.C. § 501(c). By placing the preference-action defendant's constitutional rights at the mercy of debtors, the court of appeals has trivialized the decisions by which this Court has so carefully preserved such defendants' rights under the Seventh Amendment and Article III.

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[12] Indeed, if the preference action has not been finally adjudicated at the time a reorganization plan is approved, the defendant may well have no practical choice but to file a proof of claim to insure that the plan reserves assets by which the reorganized debtor can pay (pro rata) the claim that will arise if the defendant loses the preference action.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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APPENDICES

APPENDIX A

Filed December 28, 1992

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-7455

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE;
TRANS WORLD AIRLINES, INC.;
OFFICIAL UNSECURED CREDITORS COMMITTEE,
Respondents.

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 92-00115)

Argued Tuesday, November 17, 1992

BEFORE: MANSMANN, HUTCHINSON and
GARTH, *Circuit Judges*

(Opinion filed December 28, 1992)

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OPINION OF THE COURT

GARTH, *Circuit Judge*:

Presently before the Court is the petition of Travellers International AG. ("Travellers") for a writ of mandamus directing the district court to withdraw an adversary proceeding from the bankruptcy court for a jury trial in the district court. The sole legal question raised by the petition is whether a contingent proof of claim filed against a bankrupt estate, arising from a judgment in favor of a creditor ("Travellers"), subjects the creditor corporation to the equitable jurisdiction of the bankruptcy court, thereby waiving the creditor-claimant's Seventh Amendment right to a jury trial. We will deny the writ.

I.

On October 22, 1991, the United States District Court for the Southern District of New York entered judgment in the amount of $12,336,127.00 against Transworld Airlines, Inc. ("TWA") and in favor of Travellers for damages caused by TWA's breach of contract. *Travellers Int'l AG. v. Trans World Airlines, Inc.*, No. 88 Civ. 1484 (S.D.N.Y.), *appeal pending*, No. 91-9250 (2d Cir.) TWA deposited $13,693,101.42 in cash (the "Deposit") with the clerk of court on November 4, 1991, obtaining a stay of execution of the judgment pending appeal.[1]

On January 31, 1992, eighty-eight days after the Deposit was made, TWA filed a petition for reorganization under Chapter 11 (11 U.S.C. §§ 107, *et seq*). Subsequently, TWA filed a complaint against Travellers in the United States Bankruptcy Court for the District of Dela-

[1] The appeal of the contract action has since been stayed in light of the automatic stay provision of the Bankruptcy Code.

ware seeking a declaration that the Deposit was a preferential transfer which was voidable under 11 U.S.C. §§ 547 and 550. Alternatively, TWA sought a declaration that the Deposit be turned over to TWA as property of the debtor's estate under 11 U.S.C. § 543. Consistent with the relief requested, TWA also sought to enjoin Travellers from making claim to the Deposit.

Pursuant to its order of April 3, 1992, the bankruptcy court issued a Notice of Bar Date for Filing Proofs of Claims providing that "[a]ny [creditor] of TWA whose claim is not listed or properly listed in [TWA's schedule of liabilities] . . . and who desires to participate in this case . . . must file a proof of claim on or before the bar date [May 15, 1992]." (A16) Furthermore, the bar notice warned that any creditor which was required to file a claim, but which failed to do so, would be barred from participating in the distribution of the bankrupt estate. (A16) Under the order, and consistent with 11 U.S.C. § 101(5)(A), "claim" was defined as "any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." (A15) Travellers was served with this notice as well as a statement indicating that Travellers was not listed on TWA's Schedule of Liabilities.

On May 14, 1992, Travellers responded to the notice by filing a proof of claim which stated that the claim was secured by the Deposit and that it would become an unsecured nonpriority claim only if TWA were to prevail on appeal. In addition, in a footnote to the completed claim form, Travellers provided, "Claimant does not, by filing this claim, waive its demand for jury trial in [TWA's adversary proceeding]." (A19)

On July 15, 1992, Travellers filed a motion asking the district court to withdraw TWA's adversary proceeding from the bankruptcy court arguing

> (1) that it is entitled to a jury trial of the factual issues raised by TWA's complaint (and Travellers' defenses) and that the bankruptcy court has no authority to preside over a jury trial, and (2) that even if Travellers were not entitled to a jury trial, the adversary proceeding involves wholly private rights that can be adjudicated only by an Article III court.

Travellers' Brief at 7.

In accordance with the district court's procedure, the motion to withdraw was first submitted to the bankruptcy court to determine whether TWA's adversary proceeding was a core or non-core proceeding pursuant to 28 U.S.C. § 157(b)(3).[2] The bankruptcy court issued an order on July 31, 1992, holding that both the preference and turnover claims were core proceedings. Subsequently, by Memorandum Opinion and Order dated August 27, 1992, the district court denied Traveller's motion to withdraw TWA's adversary proceeding from the bankruptcy court. Travellers now petitions this court to issue a writ of mandamus directing the district court to withdraw the reference from the bankruptcy court for a jury trial in the district court.

II.

Because of the undesirability of making a district court judge a litigant and the inefficiency of piecemeal appeals, issuance of a writ of mandamus is limited to ex-

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[2] 28 U.S.C. § 157(b)(3) provides:

> The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to the case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

tradordinary cases. *In Re School Asbestos Litigation*, Nos. 91-1887, 1917, 1943, 1981, 2105, 1014, 92-1053, 1084, slip op. at 19 (3d Cir. Oct. 8, 1992); *In Re Pruitt*, 910 F.2d 1160, 1167 (3d Cir. 1990). However, despite the general reluctance to grant writs of mandamus, we may do so provided that the petitioner demonstrated to obtain the relief sought and that the petitioner's right to the issuance of a writ is clear and undisputable. Our cases have also emphasized that mandamus must not be used as a mere substitute for appeal. *Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1422 (3d Cir. 1991); *In Re Pruitt*, 910 F.2d at 1167. Moreover, it is in our discretion to determine whether the writ should issue. *In Re School Asbestos Litigation*, Nos. 91-1887, 1917, 1943, 1981, 2105, 1014, 92-1053, 1084, slip op. at 19. Additionally, we have recently "reiterate[d] our preference for an explanation in the petition for why an interlocutory appeal is not an adequate alternative. Where interlocutory appeal seems a practical but untrue avenue, we will ordinarily deny a petition for mandamus." *Id.* at 23.

III.

In the case at hand, we need not address the various qualifications discussed above which determine whether a writ of mandamus should issue or whether the interlocutory or final appeals processes would have provided Travellers with an adequate alternative means to obtain the relief it seeks. As we have noted, an essential requirement for the issuance of a writ is that the petition must show a clear and undisputable right to the writ. This Travellers cannot do.

Travellers is neither entitled to a jury trial nor is it entitled, in the alternative, to be heard by an Article III judge. Rather, by submitting a proof of claim to the debtor's estate, Travellers effectively waived its right to

a jury trial and submitted itself to the equitable jurisdiction of the bankruptcy court.[3]

The recent Supreme Court case of *Langenkamp v. Culp*, 498 U.S. ——, 112 L. Ed. 2d 343, 347-48 (1990) controls. *Langenkamp* relies upon the teachings of *Granfinanciera S.A., v. Nordberg*, 492 U.S. 33 (1989), which "recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp v. Culp*, 498 U.S. ——, 112 L. Ed. 2d 343, 347-48 (1990). *Langenkamp* clearly holds that once a creditor files a claim against the bankruptcy estate, he losses his right to a jury trial in regard to an underlying preference action:

> If the creditor is met . . . by a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction. As such there is no Seventh Amendment right to a jury trial. If a party does not submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to re-

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[3] Alternatively, TWA argues that Travellers is foreclosed from receiving a jury trial because of the untimely nature of its demand. The district court declined to address the timeliness issue in refusing Travellers' motion for withdrawal of the reference because "[i]t is by no means clear in this district what rule or rules are applicable in assessing the timeliness of a jury demand made in an adversary proceeding instituted in bankruptcy court." District Court Opinion at 6.

Because we conclude that Travellers' right to a jury trial has been foreclosed by the Supreme Court's holding in *Langenkamp*, this Court, like the district court, need not decide whether Travellers demand for a jury was timely.

> cover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial.

Langenkamp, 112 L. Ed. 2d at 348 (citations and quotations omitted).

In the face of this controlling precedent, Travellers nonetheless argues that it is entitled to a jury trial because the proof of claim it filed was a "contingent" claim and therefore distinguishable from the type of claim discussed in *Langenkamp*:

> Since Travellers' judgment against TWA is fully secured by the cash deposit, Travellers has no claim against the bankruptcy estate unless and until TWA's preference action is decided in TWA's favor. It is thus logically impossible to conclude that the adjudication of TWA's preference action is a part of the process of allowance and disallowance of claims or that Travellers' proof of claim, noting that the preference action might not give rise to a claim, invoked that process.

Travellers' Brief at 12-13 (citations omitted).

Despite Travellers' position, its argument cannot circumvent the instruction found in *Langenkamp* that must govern our decision. *Langenkamp* involved uninsured financial institutions that filed for Chapter 11 bankruptcy protection. At the time of filing, there were depositors who had, within the preceding 90-day period, redeemed some, but not all, of the thrift and passbook savings certificates that had been issued to them by the debtors. The depositors filed proofs of claim for their non-redeemed certificates. Subsequently, the bankruptcy trustee brought a preference action against those depositors as to the redeemed certificates. The depositors, in turn, requested a jury trial on the bankruptcy trustee's preference claims, which request was denied. After a bench trial the bankruptcy court held that the redemptions constituted avoidable preferences.

The Tenth Circuit reversed, holding that the creditors were entitled to a jury trial as to the redeemed certificates, for which no claims had been filed. The Supreme Court, however, rejected the Tenth Circuit's analysis, holding that creditors who had earlier redeemed certificates, but who had filed a proof of claim for certificates they had yet to redeem, had, by filing claims as to non-redeemed certificates, brought themselves and their redeemed certificates within the equity jurisdiction of the bankruptcy court. Thus, in *Langenkamp*, even though no claims, contingent or otherwise, were filed as to the redeemed certificates, the creditors had nonetheless lost their right to a jury in the preference action respecting the redeemed certificates.

Similarly, pursuant to *Langenkamp*, Travellers has, *a fortiori*, waived its right to a jury trial and has constructively submitted to the equitable jurisdiction of the bankruptcy court by filing a claim with the court. If the *Langenkamp* Court found jury waiver and bankruptcy court jurisdiction as to assets for which no claim had been filed, there can be little doubt that waiver results when, as in this case, a claim has been filed, albeit contingent and denominated as "protective". Moreover, as we have earlier observed, Travellers' argument that "contingent claims" are not encompassed by the Supreme Court's definition of "claims" is without merit. The definition of "claim" which appears in the definitional section of the Bankruptcy Code is as follows:

> "claim" means—
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, *contingent*, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured . . .

11 U.S.C. § 101(5)(A) (emphasis added).

In the absence of any qualifying language to the contrary in *Langenkamp*, there can be no question that the

Supreme Court's definition of "claim" is the same as the one found in the bar notice and in the Bankruptcy Code and includes Travellers' "protective" claim.[4]

The Supreme Court's holdings in *Granfinanciera* and *Langenkamp* leave no doubt that the equitable jurisdiction of the bankruptcy court is exclusive when its jurisdiction has been invoked by the filing of a claim. Where, as in this case, a creditor has filed a claim, even though the claim is couched in protective language and is contingent, that creditor has submitted to the bankruptcy court's equitable jurisdiction and waived any Seventh Amendment right to a jury trial.[5]

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[4] To the extent that Travellers attempts to distinguish *Langenkamp* by arguing that the Supreme Court case refers only to those preference actions in which (as in *Langenkamp*) a claim is filed before the preference action was brought, its position is unsupportable. No court has made such a distinction, nor do we find such a distinction persuasive. *Re Glen Eagle Square, Inc.*, 132 B.R. 106, 112 (Bankr. E.D.Pa. 1991), *aff'd* 132 B.R. 115 (E.D.Pa. 1991) (holding that a creditor's filing of a proof of claim after an adversary proceeding is brought against it constitutes "a knowing, voluntary, and intelligent waiver of its rights to a jury trial").

[5] Because Travellers waived its right to a jury trial under *Langenkamp*, there is no need to address the question of whether, if Travellers had not waived its Seventh Amendment right, withdrawal of the reference would be unnecessary because the bankruptcy court may be empowered to conduct jury trials. *See, e.g., In re Ben Cooper, Inc.*, 896 F.2d 1394 (2d Cir.), *cert. granted sub nom. Ins. Co. of Pennsylvania v. Ben Cooper, Inc.*, 110 S. Ct. 3269 (1990), *vacated & remanded for consideration of a jurisdictional issue*, 111 S. Ct. 2041 (1991).

Travellers' alternative argument, that whether, or not it has waived its right to a jury trial, it is entitled to a trial conducted by an Article III judge, is, in our opinion, without merit. *Langenkamp* expressly holds that once a defendant in a preference action has submitted a proof of claim, both the claim and the preference action "become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction." *Langenkamp*, 112 L. Ed. 2d at 348.

IV.

Because Travellers waived its right to a jury trial when it filed a proof of claim against the bankrupt estate of TWA, Travellers' petition for a writ of mandamus will be denied.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE TRANS WORLD AIRLINES, INC.,
Debtor.

Civil Action No. 92-461-SLR

TRANS WORLD AIRLINES, INC.,
Plaintiff,

OFFICIAL UNSECURED CREDITORS COMMITTEE,

v.

TRAVELLERS INTERNATIONAL AG.,
Defendant.

William H. Sudell, Jr., Esquire, and Kenneth J. Nachbar, Esquire, of Morris, Nichols, Arsht & Tunnell, Wilmington, Delaware; attorneys for debtor-plaintiff Trans World Airlines, Inc. Of Counsel: Jones, Day, Reavis & Pogue, New York, New York.

Laura D. Jones, Esquire, of Young, Conaway, Stargatt & Taylor, Wilmington, Delaware; attorney for plaintiff Official Unsecured Creditors Committee.

Laurie S. Silverstein, Esquire, of Potter Anderson & Corroon, Wilmington, Delaware; attorney for defendant Travellers International AG.

MEMORANDUM OPINION

Dated: August 27, 1992

Wilmington, Delaware

Robinson, District Judge

I. PROCEDURAL AND FACTUAL BACKGROUND

On October 22, 1991, the United States District Court for the Southern District of New York entered judgment for $12,336,127.00 against debtor Trans World Airlines, Inc. ("TWA") in favor of Travellers International AG. ("Travellers") for damages caused by TWA's breach of a contract. *Travellers Int'l AG. v. Trans World Airlines, Inc.*, No. 88 CIV. 1484 (RJW) (S.D.N.Y. 1991), appeal pending No. 91-9250 (2d Cir.). On November 4, 1991, TWA deposited $13,693,101.42 in cash (hereinafter referred to as the "Deposit") with the Clerk of that court (the "Clerk") to obtain a stay of execution of the judgment pending appeal.[1]

Eighty-eight days later, on January 31, 1992, TWA filed its petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) and, on March 17, 1992, it served an adversary complaint against Travellers seeking declaratory and injunctive relief. More specifically, as amended on July 10, 1992, the amended complaint seeks (1) a declaration that the Deposit is a voidable preference under 11 U.S.C. §§ 547 and 550, together with an injunction under 11 U.S.C. § 105 preventing Travellers from making any claim to the Deposit in this or any other forum; and, in the alternative, (2) a declaration that the Deposit is property of the estate that is subject to being turned over to the estate under 11 U.S.C. § 542, together with an injunction under § 105 preventing Travellers from making any claim to the Deposit in this or any other forum.

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[1] The original October 22, 1991 judgment for $12,318,242.00 was amended *nunc pro tunc* on October 31, 1991 to reflect the higher amount.

On April 3, 1992, the United States Bankruptcy Court for the District of Delaware entered an order providing that "[a]ny creditor of TWA whose prepetition claim is not listed or properly listed in [TWA's Schedule of Liabilities] . . . and who desires to participate in this case or share in any distribution in this case, must file a proof of claim on or before the Bar Date," established as May 15, 1992. For purposes of the Order, "claim" was defined as "any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. . . ." Travellers was served with that Order, along with a statement to the effect that TWA's Schedule of Liabilities indicated that TWA was not indebted to Travellers.

Travellers served its answer to TWA's complaint on April 29, 1992. On May 12, 1992, Travellers served its demand for a jury trial in the adversary proceeding. On May 14, 1992, Travellers filed a proof of claim with respect to its judgment, stating that its claim was secured by the $13.69 million cash deposit and would become an unsecured nonpriority claim against the debtor's estate only if TWA were to prevail in the present adversary proceeding. In a footnote to its proof of claim, Travellers asserted that "[c]laimant [Travellers] does not by filing this claim waive its demand for jury trial." (D.I. 7 at 12 n.11)

On July 15, 1992, Travellers filed a motion to withdraw the reference to the bankruptcy court with respect to the adversary proceeding. (D.I. 1) By order issued July 31, 1992, the bankruptcy court determined that both the turnover claims and the preference claims asserted by TWA in its adversary proceeding were "core matters" pursuant to 28 U.S.C. § 157(b)(3). (D.I. 9)

II. STATUTORY FRAMEWORK

Under 28 U.S.C. § 157(a), "[e]ach district court may provide that any or all cases under title 11 [11 U.S.C. §§ 101 *et seq.*] and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." Referral of such title 11 proceedings from the United States District Court for the District of Delaware to the United States Bankruptcy Court for the District of Delaware is automatic pursuant to a Standing Order of Reference dated July 23, 1984.

Section 157(b)(1) provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title." Core proceedings are described in 28 U.S.C. § 157(b)(2) as including "orders to turn over property of the estate" and "proceedings to determine, avoid, or recover preferences". 28 U.S.C. § 157(b)(2)(E), (F).

According to § 157(b)(3), "[t]he bankruptcy judge shall determine . . . whether a proceeding is a core proceeding . . . or is a proceeding that is otherwise related to a case under title 11." 28 U.S.C. § 157(b)(3). The distinction between core and non-core proceedings is significant; a bankruptcy judge is authorized to "hear and determine . . . all core proceedings", but is authorized (absent consent) only to "hear a proceeding that is not a core proceeding" and to "submit proposed findings of fact and conclusions of law to the district court", with any final order of judgment to be entered by the district court. 28 U.S.C. § 157(b), (c).

"The district court *may* withdraw, in whole or in part, any case or proceeding referred" to the bankruptcy court "for cause shown". 28 U.S.C. § 157 (emphasis added).

When "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce", however, mandatory withdrawal applies. 28 U.S.C. § 157(d).

Section 501(a) of title 11, United States Code, provides that a creditor "*may* file a proof of claim" where some purpose would be served, e.g.,

> where a claim that appears on a list . . . was incorrectly stated or listed as disputed, contingent or unliquidated, where a creditor with a lien is undersecured and asserts a claim for the balance of the debt owed him. . . , or in a liquidation case where there will be a distribution of assets to the holders of allowed claims. In other instances, such as in no-asset liquidation cases, in situations where a secured creditor does not assert any claim against the estate and a determination of his claim is not requested. . . , or in situations where the claim asserted would be subordinated and the creditor would not recover from the estate in any event, filing of a proof of claim may simply not be necessary.

11 U.S.C. § 501(a) (emphasis added); H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) at 351 (emphasis added). Section 501(d) provides that certain claims, including those that "become[] fixed after the commencement of the case", "may be filed . . . the same as if such claim were claimed against the debtor and had arisen before the date of the filing of the petition." *See* 11 U.S.C. § 502(e)(2).

III. ISSUES

Travellers asserts in support of its motion to withdraw reference to the bankruptcy court that it is entitled to a jury trial in resolving its disputes with TWA over the Deposit; since the bankruptcy court is not empowered to

conduct jury trials, cause exists for a withdrawal of reference. Travellers argues as well that the dispute at issue involves "private rights" which "must be adjudicated by an Article III court". (D.I. 3, 8)

TWA counters that Travellers is not entitled to a jury trial on TWA's claims for relief because Travellers did not timely file its jury demand. In addition, by filing a proof of claim, Travellers submitted to the equitable jurisdiction of the bankruptcy court. Finally, TWA argues that the preference claims at issue are core proceedings which bankruptcy court should adjudicate; thus, the withdrawal of reference of this proceeding is neither mandated nor justifiable. (D.I. 7)

IV. DISCUSSION

A. Withdrawal of Reference to Protect Right to Jury Trial

1. *Timeliness of Jury Demand*

It is by no means clear in this district what rule or rules are applicable in assessing the timeliness of a jury demand made in an adversary proceeding instituted in bankruptcy court. Under the circumstances of this case, where the demand was at most (by TWA's own calculations, D.I. 7 at 7 n.5) one day late, I decline to resolve Travellers' motion on this basis and leave for another day the question of how to calculate the timeliness of a jury demand.

2. *Proof of Claim*

Travellers asserts that the proof of claim it admittedly filed on May 14, 1992 "cannot be equated" to a "claim against the debtor's estate"; rather, the proof of claim was filed only because the bankruptcy court, in adopting TWA's "Notice of Bar Date for Filing Proofs of Claim", indicated that failure to file a proof of claim by the bar

date would bar a claim arising after that date if it arose as the result of a contingency known before that date. (D.I. 8 at 9-10) Travellers concludes by stating that it

> currently has no claim against TWA; its judgment is fully secured by the cash deposit held by the clerk, and its only *current* is against that deposit. Thus, as is crystal clear from the document itself, Travellers' "proof of claim" was filed for protective purposes only. The difference between it and the ordinary proof of claim, which also "protects" a creditor's claim against the estate, is that Travellers has no present claim against the estate and has not invoked the equitable jurisdiction of the bankruptcy court. Only if TWA prevails in the very proceeding sought to be withdrawn from that court will Travellers' proof of claim invoke such jurisdiction. It is protective in the sense that it protects Travellers' right to *make a claim* against the estate should that contingency arise.

(D.I. 8 at 8-9) (emphasis in original).

The Supreme Court has stated that "[i]f a party does not submit a claim against the bankruptcy estate, . . . the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial." *Langenkamp v. Culp*, 111 S.Ct. 330, 331 (1990), *citing to Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58 (1989) ("[A]lthough petitioner might be entitled to a jury trial on the issue of preference if he presented no claim in the bankruptcy proceeding and awaited a federal plenary action by the trustee. . . , when the same issue arises as part of the process of allowance and disallowance of claims, it is triable in equity."). Conversely, a creditor that files a claim against the bankruptcy estate subjects itself to the bankruptcy court's equitable power. Thus, if the trustee thereafter institutes a preference action against

the creditor, said proceeding "becomes part of the claims-allowance process which is triable only in equity." *Langenkamp*, 111 S.Ct. at 331. *See also Katchen v. Landy*, 382 U.S. 323, 327-28, 339 (1966) (a trustee's preference proceeding, filed in response to a creditor's claim, may be summarily adjudicated by the bankruptcy court). Travellers does not disagree with these general principles, but hastens to argue that said principles are inapplicable to the circumstances at bar. This Court disagrees.

In *Langenkamp*, the respondents submitted claims against the bankruptcy estate and were then sued by the trustee in bankruptcy to recover allegedly preferential monetary transfers. The United States Court of Appeals for the Tenth Circuit noted in its review that the respondents were not "creditors" and did

> not even have a contingent right to payment from the debtors' estates at this point; rather, as defendants in the trustee's adversary proceedings, they may have an obligation or liability to pay the estate the monies transferred to them by the debtors. Until the adversary proceedings are finally adjudicated, the trustee has a claim against the [respondents] for payment; [respondents] have a potential duty to pay. [Respondents] will have a claim against the estates only if the trustee prevails in the adversary proceedings and successfully avoids the debtors' transfers to [respondents] as preferences under 11 U.S.C. § 547.

Re Republic Trust & Sav. Co., 897 F.2d 1041, 1045-46 (10th Cir. 1990), *rev'd on other grounds sub nom., Langenkamp v. Culp*, 111 S.Ct. 330 (1990). Although the Tenth Circuit acknowledged that some of the respondents had filed claims against the estate "because they continued to have monies invested in the debtors at the time of the bankruptcy", the appellate court concluded that said respondents were entitled to a jury trial because the "trustee's actions to avoid the transfers . . . were plenary

rather than part of the bankruptcy court's summary proceedings involving the 'process of allowance and disallowance of claims.' " *Id.* at 1046-47. The United States Supreme Court disagreed, holding simply that since respondents had filed claims against the bankruptcy estate, they had brought themselves "within the equitable jurisdiction of the bankruptcy court. Consequently, they were not entitled to a jury trial on the trustee's preference action." *Langenkamp*, 111 S.Ct. at 331-32.

It would appear, then, that a defendant in a preference action is not a "creditor" of the bankruptcy estate and need not (indeed, should not) file a claim against the estate. If such a defendant does file a claim, even if it relates to property other than that at issue in the adversary proceeding (the apparent situation in *Langenkamp*), the case law suggests that said party subjects itself to the bankruptcy court's equitable power for all purposes.

Travellers would have this Court ascribe no meaning to the proof of claim it filed because the claim was filed after the commencement of the adversary proceeding in response to the April 3, 1992 order of the bankruptcy court. This Court declines to do so. As explained in *Re Glen Eagle Square, Inc.*, 132 B.R. 106, 112 (Bankr. E.D. Pa. 1991), *aff'd* 132 B.R. 115 (E.D.Pa. 1991), the filing of a proof of claim is not a "mere procedural nicety", especially in light of the decisions in *Granfinanciera* and *Langenkamp*. As stated in *Re Glen Eagle Square, Inc.*,

> [i]t is clear that, when [the preference defendant] filed its proof of claim, it was aware of the existence of the Proceeding and hence it did so with knowledge that this filing could jeopardize its jury trial demand in the proceeding. The filing of its proof of claim by [the preference defendant] in such circumstances would appear to clearly constitute a knowing, voluntary, and intelligent waiver of its rights to a jury trial. . . . [T]he filing of a proof

of claim constitutes a creditor's complete submission to bankruptcy court jurisdiction.

132 B.R. at 112. *See also Re Barral*, 139 B.R. 789 (Bankr. S.D.N.Y. 1992) ("[W]hen a creditor files a claim against a debtor, a trial by jury is waived by the creditor because a determination of the claim is part and parcel of the process of an allowance and disallowance of claims which is integral to the restructuring of the debtor-creditor relationship, and, therefore, a public right."); *Keller v. Blinder*, 135 B.R. 892 (D.Colo. 1991); *Growers Packing Co. v. Community Bank of Homestead*, 134 B.R. 438, 440 (S.D.Fla. 1991); *Torcise v. Community Bank of Homestead*, 131 B.R. 503, 505 (S.D.Fla. 1991); *Re National Enterprises, Inc.*, 128 B.R. 956, 961 (E.D. Va. 1991); *Re Coated Sales, Inc.*, 119 B.R. 452, 455-56 (Bankr. S.D.N.Y. 1990); *Re North Carolina Hosp. Assn. Trust Fund*, 112 B.R. 759, 761 (Bankr. E.D.N.C. 1990). Although Travellers specifically noted its jury demand in its proof of claim, Travellers is unable to direct the Court to any case where a similarly situated preference defendant has been deemed entitled to a jury trial after submission of a proof of claim, regardless of the timing and with or without such an express reservation of its Seventh Amendment rights.[2]

B. *Withdrawal of Reference to Adjudicate Private Rights*

Travellers asserts that it is entitled to a withdrawal of reference of these proceedings to the bankruptcy court regardless of whether its demand for a jury trial is granted. Travellers grounds its position on the assertion "that the rights at issue in this proceeding cannot be adjudicated by a forum that lacks the attributes prescribed by Article III of the Constitution." (D.I. 8 at 14-15)

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[2] And, indeed, the Court is not aware of any case directly on point.

The bankruptcy court has determined that both the turnover claims and the preference claims asserted in this proceeding are core matters. The Supreme Court has distinguished between "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power," and "the adjudication of state-created private rights, such as the right to recover contract damages." *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982). The Court held that the adjudication of state-created private rights is constitutionally reserved to Article III judges. Thus, if the issues before the Court "existed prior to and independent of the filing of the instant bankruptcy", the action is a non-core proceeding. *Re Delaware & H.R. Co.*, 122 B.R. 887, 894 (D.Del. 1991). Conversely, if the proceeding at bar "invokes a substantive right provided by Title 11, or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case", the proceeding is core. *Beard v. Bernstein*, 914 F.2d 434, 444 (3d Cir. 1990).

In the case of a permissive withdrawal,

> [t]he district court should consider the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process.

Re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990). This Court likewise has stated that "permissive withdrawal for 'cause' includes considerations of the nature of the proceeding (i.e., core or non-core proceedings) and judicial economy." *Hatzel & Buehler, Inc. v. Orange & Rockland Utilities, Inc.*, 107 B.R. 34, 39 (D.Del. 1989). Moreover, this Court has found that "the 'cause shown' requirement in § 157(d) creates a 'presumption that Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court unless rebutted by a contravening policy.'" *Hatzel & Buehler v. Central Hudson Gas & Electric Corp.*, 106 B.R. 367, 371 (D.Del. 1989).

Although the instant dispute arguably has its origins in wholly private, common-law contract rights, such rights were adjudicated by an Article III forum prior to the institution of these bankruptcy proceedings, leaving only "a proceeding that, by its nature, could arise only in the context of a bankruptcy case", i.e., the avoidance of a preferential transfer and the resultant retrieval of assets. *See Beard v. Braunstein*, 914 F.2d at 444. Since no judicial economy is served by a permissive withdrawal of this case and Travellers has proffered no other sufficient cause, the Court denies Travellers' motion.[3]

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[3] Even if this Court had accepted Travellers' position vis-a-vis its proof of claim, it still is by no means clear that Travellers would be entitled to a withdrawal of reference to protect its Seventh Amendment rights. In the absence of a claim, the three-part test established in *Granfinanciera* comes into play, which directs the Court to determine whether the preference action and the relief sought at bar are legal or equitable in nature; if legal in nature, the Court must further determine "whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder." *Granfinanciera*, 492 U.S. at 42. With respect to the nature of the preference action at bar, the Supreme Court in *Granfinanciera* specifically "left open the possibiltiy that a jury trial might not be required because in some cases preference avoidance actions are equitable in character." 492 U.S. at 58 n.13. *See also Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 95 (1932) ("The question whether remedy must be by action at law or may be pursued in equity notwithstanding objection by defendant *depends upon the facts stated in the bill.*") (emphasis added). With respect to "[t]he second, 'more important' part of the inquiry directed by *Granfinanciera*", that is, the nature of the remedy, TWA has requested declaratory judgment and injunctive relief in this adversary proceeding, as opposed to monetary relief. *See Beard v. Braunstein*, 914 F.2d 434, 438 (3d Cir. 1990). So, unlike the facts in *Granfinanciera*, where both the nature of the action (a fraudulent conveyance action) and the relief sought (money damages) were clearly legal in nature, the proceeding and relief sought at bar could be characterized as equitable in nature.

With respect to the final prong of the *Granfinanciera* analysis, it speaks of "private" versus "public" rights. Without specifically resolving the issue of whether "the restructuring of debtor-creditor relations in bankruptcy is in fact a public right", *Granfinanciera*,

V. CONCLUSION

For the reasons stated, Travellers' motion to withdraw reference is denied.

An Order consistent with this Memorandum Opinion shall issue.

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492 U.S. at 56 & n.11, the Court found that the fraudulent conveyance action at bar was not "integral to the restructuring of debtor-creditor relations"; thus, the action seemed to the Court "more accurately described as a private rather than a public right." *Id.* at 55. As explained above, the circumstances surrounding this particular preference action are more consistent with the restructuring of debtor-creditor relations than with state-created private rights. While the Supreme Court has not directly addressed the question, this judicial officer is hard pressed to meaningfully distinguish between the *Granfinanciera* analysis and the *Marathon* analysis.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE TRANS WORLD AIRLINES, INC.,
Debtor.

Civil Action No. 92-461-SLR

TRANS WORLD AIRLINES, INC.,
Plaintiff,

OFFICIAL UNSECURED CREDITORS COMMITTEE

v.

TRAVELLERS INTERNATIONAL AG.,
Defendant.

ORDER

At Wilmington this 27th day of August, 1992, consistent with the Memorandum Opinion issued this same date;

IT IS ORDERED that defendant Travellers' motion to withdraw is denied.

/s/ Sue L. Robinson
United States District Judge

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Case No. 92-115

Chapter 11

IN RE TRANS WORLD AIRLINES, INC.,
Debtor.

Adversary Proceeding No. A-92-28

TRANS WORLD AIRLINES, INC.,
Plaintiff,

v.

TRAVELLERS INTERNATIONAL AG.,
Defendant.

ORDER

WHERAS, this adversary proceeding asserts claims that certain funds deposited with the Clerk of the United States District Court for the Southern District of New York are property of the estate subject to turnover pursuant to 11 U.S.C. § 542, and that the transfer depositing such funds constituted a preference pursuant to 11 U.S.C. § 547; and

WHERAS, this Court entered its First Pre-Trial Order on May 27, 1992, scheduling trial for September 2 and 3, 1992; and

WHERAS, on July 15, 1992, defendant filed a Motion to Withdraw Reference to the Bankruptcy Court, and as part of that Motion, requested that the Bankruptcy Court determine initially the nature of the action (core or non-core); and

WHERAS, the Court has considered the briefs of the parties and the oral arguments of counsel,

IT IS HEREBY ORDERED this 31st day of July, 1992, pursuant to 28 U.S.C. § 157(b)(3), that both the turnover claims and the preference claims asserted in this proceeding are core matters.

/s/ Helen S. Balick
Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-7455

TRAVELLERS INTERNATIONAL AG.

vs.

SUE L. ROBINSON, ETC., *et al.*

SUR PETITION FOR REHEARING

Present: SLOVITER, *Chief Judge*, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS and GARTH,* *Circuit Judges.*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ Carol Los Mansmann
Circuit Judge

[Jan. 19, 1993]

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* Senior Circuit Judge Garth voted only as to panel rehearing.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-7455

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE;
TRANS WORLD AIRLINES, INC.;
OFFICIAL UNSECURED CREDITORS COMMITTEE,
Respondents.

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 92-00115)

Present: Mansmann, Hutchinson and Garth, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Delaware and was argued by counsel November 17, 1992.

On consideration whereof, it is now here ordered and abjudged by this Court that the petition for a writ of mandamus is hereby denied. all of the above in accordance with the oppinion of this Court. Costs taxed against Travellers International AG.

ATTEST:

/s/ [Illegible]
Acting Chief Deputy Clerk

Dated: December 28, 1992

APPENDIX G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Case No. 92-115

Chapter 11

IN RE TRANS WORLD AIRLINES, INC.,
Debtor

NOTICE OF BAR DATE FOR FILING PROOFS OF CLAIM

PLEASE TAKE NOTICE THAT on April 3, 1992, the United States Bankruptcy Court for the District of Delaware entered an order in the above-captioned case (the "Order") requiring that all persons and entities (as such terms are defined in the Bankruptcy Code) including, without limitation, individuals, partnerships, corporations, estates, trusts and governmental units, EXCEPT THOSE PERSONS AND ENTITIES DISCRIBED BELOW, who have, or assert, or may have or may assert, any claim (as defined herein) against Trans World Airlines, Inc. ("TWA") that arose prior to January 31, 1992 or pursuant to the rejection of an executory contract or lease on or before the date of this Notice, whether or not TWA obtained authorization to pay any such claim (other than the prepetition claims of TWA's employees for which the Court has authorized payment (collectively, the "Authorized Employee Claims")) prior to the Bar Date pursuant to any order of the Court, must, on or before Friday, May 15, 1992 (the "Bar Date"), file proofs of claim against TWA as may be appropriate, including each and every Claim asserted by such creditor whether of an unsecured, priority or secured status.

Pursuant to an order of the Court, a claims administrator (the "Claims Administrator") has been authorized to receive proofs of claim and maintain an official claims docket. All proofs of claim must be filed so as to be received by the Claims Administrator before 5:00 p.m., prevailing time, Kansas City, Missouri, on the Bar Date. Proofs of claim may be filed by mail addressed to:

Trans World Airlines Official Claims Docketing Center
P.O. Box 20850
Kansas City, MO 64195

or they may be filed in person, by courier service or by hand delivery at:

Trans World Airlines Official Claims Docketing Center
Trans World Airlines, Inc.
11500 Ambassador Dr. Level 4
Kansas City, MO 64153

SUCH PROOFS OF CLAIM WILL BE DEEMED FILED ONLY WHEN ACTUALLY RECEIVED BY THE CLAIMS ADMINISTRATOR. You need file only one copy of each proof of claim. DO NOT FILE OR SEND COPIES OF PROOFS OF CLAIM TO THE BANKRUPTCY COURT, TWA OR ITS COUNSEL.

After proofs of claim are received, date-stamped and officially docketed by the Claims Administrator, the Claims Administrator will make and retain copies for its files and will send original proofs of claim to the Court. The Clerk of the Bankruptcy Court will maintain a second official claims docket at the office of the Clerk:

United States Bankruptcy Court
For the District of Delaware
J. Caleb Boggs Federal Building
844 King Street
6th Floor
Wilmington, DE 19801

The official claims docket at the office of the Clerk may be inspected during the Court's ordinary business hours from 9:00 a.m. to 4:30 p.m., prevailing time, Wilmington, Delaware.

For purposes of this Notice, "claim" shall mean (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

On March 24, 1992, TWA filed its schedules of liabilities (collectively, the "Schedules"). Certain of the Schedules were amended and restated on April 3, 1992. Section 1111(a) of the Bankruptcy Code, 11 U.S.C. section 1111(a), provides that a proof of claim is deemed filed for any claim that is listed in the Schedules, except a claim that is scheduled as disputed, contingent or unliquidated. To assist in determining whether you need to file a proof of claim, enclosed with this notice is a proof of claim form and an accompanying form that indicates how your claim is listed and classified on the Schedules (together, the "Proof of Claim Form"). Instructions explaining the procedures for filing a proof of claim with the Claims Administrator are also attached.

ANY PERSON OR ENTITY WHOSE CLAIM ARISES OUT OF, OR AS A CONSEQUENCE OF, THE REJECTION OF AN EXECUTORY CONTRACT OR AN UNEXPIRED LEASE AFTER APRIL 3, 1992, BUT PRIOR TO THE ENTRY OF AN ORDER BY THE COURT CONFIRMING A PLAN OF REORGANIZATION FOR TWA, MUST FILE ITS PROOF OF CLAIM ON OR BEFORE THE LATER OF (a) 30 DAYS FROM THE DATE OF THE ORDER REJECTING SUCH CONTRACT OR LEASE OR (b) THE BAR DATE.

Any person or entity whose claim arises out of the obligation of such person or entity under a contract for the provision of liability insurance to TWA (for example, claims that arise or may arise out of actions instituted against TWA that such person or entity is defending under a reservation of right(s) and any governmental units (as such term is defined in section 101(27) of the Bankruptcy Code) holding tax claims against TWA, whether arising out of prepetition tax years or periods or arising out of prepetition transactions to which TWA was a party, must file their proofs of claim on or before the Bar Date; *provided, however*, that the bar date pursuant to Bankruptcy Rule 3003(c)(3) for the filing of proofs of claim by the Internal Revenue Service (the "IRS") against TWA solely in respect of claims arising out of TWA's Form 5500 Annual Return/Report of Employee Benefit Plan and Form 1120 U.S. Corporation Income Tax Return, each for the taxable year of TWA ending on December 31, 1991, shall be 45 days from the date each such return for said taxable year is first filed with the IRS.

Any person who, or entity which, fails to file a proof of claim on or before the Bar Date (or such other date as may be provided herein), whether or not TWA obtained authorization to pay any such claim prior to the Bar Date pursuant to any order of the Bankruptcy Court, shall be forever barred, estopped and enjoined from (a) asserting claims that such person or entity possesses against TWA and (b) voting upon, or receiving distributions under, any plan of reorganization for TWA; *provided, however*, that such person or entity need not file a proof of claim if such claim has been paid on or before the Bar Date pursuant to any order of the Court or is an Authorized Employee Claim.

The Bar Date shall apply to each and every pre-petition claim asserted by a creditor of TWA whether of an unsecured, priority or secured status, except for:

(a) A claim of any person or entity that has already properly filed with the Bankruptcy Court or the

Claims Administrator a proof of claim against TWA;

(b) A claim of any person, or entity, (i) whose claim against TWA is not listed as "disputed," "contingent" or "unliquidated" in the Schedules as shown on the Proof of Claim Form and (ii) who agrees with the classification and amount set forth therein;

(c) A claim of any person or entity whose claim against TWA has previously been specifically allowed by order of this Court;

(d) A claim of any person or entity (other than an indenture trustee, security trustee or other fiduciary exercising similar responsibilities to an indenture trustee or security trustee of the Debt Securities or the ETCs (as hereinafter defined)) for TWA's repayment of principal and interest on TWA's: (i) 15% Senior Secured Notes due 1994, (ii) 16% Senior Notes due 1992, (iii) 17¼% Senior Notes due 1993, (iv) 12% Junior Subordinated Debentures due 2001, (v) 12% Junior Subordinated Debentures due 2008 (collectively, the "Debt Securities") and (vi) outstanding equipment trust certificates (the "ETCs"); *provided, however*, that (I) the foregoing exclusion shall not apply to an indenture trustee, security trustee or other fiduciary exercising similar responsibilities to an indenture trustee or security trustee of the Debt Securities or the ETCs and (II) an indenture trustee, security trustee or other fiduciary exercising similar responsibilities to an indenture trustee or security trustee of the Debt Securities or the ETCs shall be required to file a proof of claim relating to any claims arising under or relating to the Debt Securities or the ETCs; and

(e) A claim of any affiliate (as such term is defined in section 101(2) of the Bankruptcy Code) of TWA.

EACH INDENTURE TRUSTEE, SECURITY TRUSTEE OR OTHER FIDUCIARY EXERCISING SIMILAR RESPONSIBILITIES TO AN INDENTURE TRUSTEE OR SECURITY TRUSTEE OF THE DEBT SESURITIES OR ETCs WILL BE FILING CLAIMS FOR REPAYMENT OF PRINCIPAL AND INTEREST ON BEHALF OF HOLDERS OF THE DEBT SECURITIES. A PERSON OR ENTITY HAVING A CLAIM FOR THE REPAYMENT BY TWA OF PRINCIPAL AND INTEREST ON THE DEBT SECURITIES NEED NOT FILE A SEPARATE PROOF OF CLAIM.

Any person or entity holding an interest in TWA that is based exclusively upon the ownership of outstanding shares of common, preferred or preference stock of TWA (collectively, the "Shareholders") need not file a proof of interest with the Court or the Claims Administrator on or before the Bar Date; *provided, however*, that Shareholders who wish to assert a claim against TWA that arises out of or relates to the ownership of TWA's common, preferred or preference stock including, but not limited to, claims arising out of or relating to the sale, issuance or distribution of such common, preferred or preference stock, must file a proof of claim on or before the Bar Date, unless another exception set forth herein applies.

Any person or entity whose claim is not listed or properly classified in the Schedules, is listed in an incorrect amount or is listed as disputed, contingent or unliquidated and who desires to participate in this case or share in any distribution in this case, must file a proof of claim on or before the Bar Date, which is Friday, May 15, 1992. If it is unclear from the Schedules or the Proof of Claim Form whether your claim is disputed, contingent or unliquidated as to amount or otherwise properly listed and classified, you must file a proof of claim

on or before the Bar Date. Any person or entity who desires to rely on the Schedules will have the responsibility for determining that its claim is accurately listed therein.

TWA has reserved the right to dispute, or to assert offsets or defenses to, any claim reflected on the Schedules as to amount, liability, classification or otherwise and to subsequently designate any claim as disputed, contingent or unliquidated or to object to such claim; *provided, however*, that if TWA amends its Schedules to designate a claim as disputed, contingent or unliquidated, or to change the amount or classification of a claim reflected therein, then the creditor affected by such amendment shall be granted 30 days to file a proof of claim. Nothing set forth herein shall be deemed to preclude TWA from objecting to any claim, whether scheduled or filed, on any grounds.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the terms of the Order establishing the Bar Date, any person who, or entity which, is required to file a proof of claim hereunder, but fails to do so by the date herein required, shall be forever barred, estopped and enjoined from asserting any claim against TWA and shall be barred, estopped and enjoined from being treated as a creditor for purposes of voting on any plan of reorganization that is proposed in this chapter 11 case and from participating in the distribution under any plan of reorganization that may be confirmed in this chapter 11 case.

If you wish additional information concerning the filing of a proof of claim, whether you are listed on the Schedules, or the manner in which you are listed on the Schedules, you may contact TWA, c/o Claims Administrator, by mail at the address given above or by telephone at (816) 464-7095 from 9:00 a.m. to 4:30 p.m., prevailing time, Kansas City, Missouri.

HELEN S. BALICK
United States Bankruptcy Judge

TRANS WORLD AIRLINES, INC.
ATTACHMENT TO PROOF OF CLAIM FORM AND
NOTICE OF BAR DATE FOR FILING
PROOFS OF CLAIM

CERTAIN VENDORS AND OTHER
MISCELLANEOUS PARTIES

You have received this notice because you may currently do or previously have done business with Trans World Airlines, Inc. ("TWA"), or you may have some other relationship or connection with TWA. The Schedules of Liabilities filed by TWA indicate that TWA is not indebted to you, classifying your claim as disputed, unliquidated or contingent. If you believe that you have a claim against TWA, you must file a proof of claim form on or before May 15, 1992, in accordance with the instructions in the enclosed Notice of Bar Date for Filing Proofs of Claim.

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE - PROOF OF CLAIM

3038612

IN RE:
TRANS WORLD AIRLINES, INC.,

CASE NO. 92-115 DEBTOR.

THIS PROOF OF CLAIM MUST BE RECEIVED NO LATER THAN 5:00 P.M., KANSAS CITY TIME, MAY 15, 1992

1 Name and Address of Creditor:

CREDITOR NO 00001779

Kirby Richard, Esq. Travellers International A. G.
Dyer, Ellis, Joseph & Mills c/o Richard A. Kirby, Esq.
600 New Hampshire Ave. NW
Washington, DC 20037-2403

☒ Check if name or address as printed is not correct. please indicate correct name and address to which notices should be mailed.

☐ Check if you never received any notices from the bankruptcy court in this case.

Telephone No. 202-944-3000

Social Security No. _____

Tax I.D. No. Not Applicable

2. This claim (Check box if applicable:)
A. ☐ replaces ☐ amends, or ☐ supplements a previously-filed Proof of Claim dated: _____
B. ☐ Check if you are aware that anyone else has filed a Proof of Claim relating to your claim. Attach copy or statement giving particulars.

3. Date or Dates Debt Was Incurred or Claim Arose: 1988 through 1990

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C section 503.

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describs your claim and STATE THE AMOUNT OF THE CLAIM.

☒ SECURED CLAIM $ 13,005,778.02*
Attach evidence of perfection of security interest
Brief Description of Collateral:

☐ Real Estate ☐ Motor Vehicle ☒ Other (Describe briefly) **

Amount of arrearags and other charges included in secured claim above if any $ *

☐ UNSECURED NONPRIORITY CLAIM $ * * *
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM $_____
Specify the priorty of the claim.
- ☐ Wages, salaries, or commissions (up to $2000, earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier)-11 U.S.C section 507(a)(3).
- ☐ Contributions to an employee benefit plan-11 U.S.C. section 507(a)(4).
- ☐ Up to $900 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use-11 U.S.C. section 507(a)(6).
- ☐ Taxes or penalties of governmental units-11 U.S.C. section 507(a)(7).
- ☐ Other-11 U.S.C. section 507(a)(2),(a)(5)-(Describe briefly)

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: $_____ (Unsecured) $12,688,381.97 (Secured) $_____ (Priorty) $12,688,381.97 (Total)

☒ Check this box if claim includes prepetition charges in additon to the principal amount of the claim. Attach itemized statement of all additional charges. *

6. Basis for Claim (Check box if applicable):

Unsecured Nonpriority Claims:
- ☐ Public Debt (F1)
- ☐ Accounts Payable (F3)
- ☐ Litigation (F4)
- ☐ Customer Relations (F5)
- ☐ Insured Claims (F6)
- ☐ Workers' Compensation (F7)
- ☐ Universal Air Travel Plan (F8)
- ☐ Cargo Freight (F9)
- ☐ Abandoned Property (F10)
- ☐ Unredeemed Common Stock (F11)
- ☐ Other_____ (F50)

Unsecured Priority Claims:
- ☐ Employee Wages (E1)
- ☐ Contributions to Employee Benefit Plans (E3)
- ☐ Taxes - Income and Franchise (4A)
- ☐ Taxes - Sales and Use (4B)
- ☐ Taxes - Real and Personal Property (4C)
- ☐ Taxes - Employment (4D)
- ☐ Other - _____ (4E)

Secured Claims:
- ☐ Public Debt (D1)
- ☐ Equipment Trust Certificates - Issue-(D2)
- ☐ Capital Leases (D3)
- ☐ Aircraft Purchase Financing (D4)
- ☒ Other Judgment (D5)

APPENDIX H

7. No judgement has been rendered on this claim except: (see Item No. 11, this form)

8. This claim is not subject to any setoff except: _____
Attach a description of the nature and an itemization of all amounts and dates of payments which have been credited against any amount you owe TWA. List any setoff or counterclaim which TWA may have against your claim.

9. If this claim was assigned to the undersigned claimant, indicate from whom the claim was assigned: _____

10. Is another entity, in addition to TWA, primarily or secondarily liable on the claim asserted in this proof of claim? If so, please name that entity and describe the basis of such liability. _____

11. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interest. If the documents are not available, explain. If the documents are voluminous, attach a summary or listing of those documents. Attached copies of (1) Judgment underlying claim, (2) Stipulation and Order on Consent, and (3) Evidence of security.

12. PLEASE READ CAREFULLY THE ENCLOSED NOTICE OF BAR DATE AND ATTACHED MATERIAL, WHICH INFORM YOU OF YOUR RIGHTS AND OBLIGATIONS BEFORE FILLING OUT THIS PROOF OF CLAIM.

Mail this proof of claim so that it is received not later than 5:00 p.m., May 15, 1992 to:

By Mail

Trans World Airlines Official Claims Docketing Center
P.O. Box 20850
Kansas City, MO 64195

By Hand or Courier

Trans World Airlines Official Claims Docketing Center
Trans World Airlines, Inc.
Claims Administration
11500 Ambassador Dr. Level 4
Kansas City, MO. 64153

DO NOT MAIL OR DELIVER YOUR PROOF OF CLAIM TO ANY OTHER ADDRESS. BE SURE TO SIGN THIS FORM IN THE SPACE INDICATED.

Date, Sign and Print Name and Title, if any, of the creditor or other person authorized to file this claim (attach power of attorney, if any).

Date: May 13, 1992

Signature: _____ [1]

Print Name: Richard A. Kirby

Title: Attorney for Travellers International A.G.

Penalty for Presenting Fraudulent Claim: Fine of up to $5,000 or imprisonment for up to five years, or both. 18 U.S.C. sections 152 and 3571.

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[1] Claimant does not, by filing this claim, waive its demand for jury trial in Adv. Proc. No. A-92-28.

SUPPLEMENT TO
PROOF OF CLAIM FOR CREDITOR NO. 00001779,
TRAVELLERS INTERNATIONAL AG.

* *ITEMIZATION OF SECURED CLAIM*

The stated amount includes the principal amount of judgment, bill of costs as filed, and post judgment interest (per New York law) to the date of this claim in accordance with attached computation. The stated amount does not include post-judgment interest that continues to accrue in accordance with New York law after the date of this claim to date of payment, claim for which is also hereby made.

** *DESCRIPTION OF COLLATERAL*

Cash deposit of $13,693,101.42 made by debtor on November 4, 1991 with the Clerk, United States District Court for the Southern District of New York, pursuant to order dated Ocotber 31, 1991.

*** *POTENTIAL UNSECURED NONPRIORITY CLAIM*

The collateral securing this claim consists of cash on deposit with the Clerk, United States District Court for the Southern District of New York, pending appeal in *Travellers International A.G. v. Trans World Airlines, Inc.*, No. 91-9250 (2d Cir.). The collateral is subject to the debtor's pending claim to recover the cash deposit in an adversary proceeding filed by debtor styled *Trans World Airlines, Inc. v. Travellers International A.G.*, Adv. Proc. No. A-92-28 (Bankr. D. Del.). Should debtor prevail in the adversary proceeding, this claim would be an unsecured nonpriority claim.

APPENDIX I

Title 28, United States Code

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowances or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaim by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c) (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

Supreme Court, U.S.
FILED
APR 6 1993
OFFICE OF THE CLERK

No. 92-1451

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC. AND
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT TRANS WORLD AIRLINES, INC. IN OPPOSITION

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Attorneys for Respondent Trans World Airlines, Inc.

BEST AVAILABLE COPY

QUESTIONS PRESENTED

I. Is the defendant in a bankruptcy court preference action entitled to a jury trial where that defendant has invoked the equitable claims allowance process of the bankruptcy court by filing a proof of claim?

II. Does bankruptcy court jurisdiction over a preference action against a defendant who has filed a proof of claim violate Article III of the United States Constitution?

LIST OF PARTIES AND RULE 29.1 LISTING

The names of all parties appear in the caption of the case. Respondent Trans World Airlines, Inc. ("TWA") is a Delaware corporation. TWA has no parent company, and all of TWA's subsidiaries and affiliates are wholly owned except Travel Marketing Corporation.

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No. 92-1451

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,

v.

TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC. and
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR RESPONDENT TRANS WORLD AIRLINES, INC. IN OPPOSITION

Respondent TWA respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Third Circuit's decision.

STATEMENT OF THE CASE

On October 22, 1991, the United States District Court for the Southern District of New York entered judgment in favor of Petitioner Travellers International AG. ("Travellers" or "Petitioner") on Travellers' breach of contract action against Respondent TWA in the amount of $12,336,127.41.[1] TWA obtained a stay of execution on the judgment pending appeal by depositing $13,693,101.42 (the "Deposit") in lieu of a supersedeas bond with the clerk of that court on November 4, 1991.

Less than ninety days after making the Deposit, TWA filed a petition for reorganization under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. TWA later filed this adversary proceeding in the bankruptcy court. TWA's complaint against Travellers, as amended, seeks a declaration that the Deposit is a voidable preference under 11 U.S.C. §§ 547 and 550 and, alternatively, that the Deposit belongs to TWA as property of the estate under 11 U.S.C. § 542. TWA also seeks an injunction preventing Travellers from making any claim to the Deposit under 11 U.S.C. § 105.

The bankruptcy court issued a Notice of Bar Date For Filing Proofs of Claim dated April 3, 1992. Pet. App. 30a. The Notice provided that creditors of TWA having prepetition claims must file proofs of claim on or before May 15, 1992 if they desired to participate in the bankruptcy case. Pet. App. 35a. Travellers never objected to or sought any form of relief from the Notice.

On May 14, 1992, Travellers elected to file a proof of claim in the bankruptcy court. Pet. App. 39a. The proof of claim asserted that Travellers had a secured claim of

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[1] *Travellers Int'l AG. v. Trans World Airlines, Inc.*, No. 88 Civ. 1484 (RJW) (S.D.N.Y.), *appeal docketed*, No. 91-9250 (2d Cir. Dec. 2, 1991).

$13,005,778.02, and stated that Travellers' claim had arisen during "1988 through 1990" and had totalled $12,688,381.97 at the time TWA filed its bankruptcy petition. Pet. App. 39a ¶¶ 3-5. Travellers added in a supplement to its proof of claim that if TWA prevailed in this adversary proceeding, Travellers' claim would be an unsecured claim. Pet. App. 41a.

On July 15, 1992, Travellers filed a motion requesting that the United States District Court for the District of Delaware withdraw the reference of this adversary proceeding from the bankruptcy court. Travellers argued that the district court should hear this action because Travellers is entitled to a jury trial which the bankruptcy court cannot conduct; and that bankruptcy court jurisdiction over this action violates Article III of the United States Constitution. The United States District Court for the District of Delaware denied Travellers' motion. Pet. App. 25a.

Travellers petitioned the United States Court of Appeals for the Third Circuit to issue a writ of mandamus directing the district court to withdraw the adversary proceeding and conduct a jury trial. The Third Circuit denied Travellers' petition for a writ of mandamus on December 28, 1992 (Pet. App. 29a) and denied Travellers' petition for rehearing and rehearing in banc on January 19, 1993 (Pet. App. 28a).

SUMMARY OF THE ARGUMENT

The Third Circuit's denial of Travellers' mandamus petition follows the controlling decision in *Langenkamp v. Culp*, 498 U.S. 42 (1990), and does not conflict with prior decisions of this Court or other federal cases. The law applicable to the issues raised by Travellers is clear, and departure from this Court's prior Seventh Amendment and Article III cases is unwarranted. The procedural posture of this case also makes it inappropriate for review of the questions presented. Accordingly, the petition for a writ of certiorari should be denied.

REASONS FOR DENYING THE WRIT

I. THE THIRD CIRCUIT'S DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT OR OTHER FEDERAL COURTS.

A. The Third Circuit's Decision Does Not Conflict With Decisions Governing The Right To Jury Trial In Bankruptcy Cases.

The Third Circuit held that Petitioner is not entitled to a jury trial in this preference action because it filed a proof of claim against the TWA bankruptcy estate. Pet. App. 11a. That decision applies, and is fully consistent with, this Court's decisions in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) and *Langenkamp v. Culp*, 498 U.S. 42 (1990).

In *Granfinanciera*, this Court held that a person who has not submitted a claim against a bankruptcy estate has a right to a jury trial when sued by the trustee in bankruptcy to recover an allegedly fraudulent monetary transfer. 492 U.S. at 36. A year later, in *Langenkamp*, this Court held that persons who had filed proofs of claim in the bankruptcy court were not entitled to a jury trial in preference actions against them. 498 U.S. at ___, 113 S. Ct. at 331. In a per curiam opinion, this Court reiterated its earlier determination in *Granfinanciera* that "by filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Id.* (quoting *Granfinanciera*, 492 U.S. at 57-58 and n.14).[2]

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[2] The denial of a jury trial on matters within the bankruptcy court's equitable power follows from the established principle that the Seventh Amendment right to jury trial does not exist in equity, but only in actions at common law. *See, e.g., Pernell v. Southhall Realty*, 416 U.S. 363, 375 (1974) (quoting *Parsons v. Bedford*, 28 U.S. 433, 447 (1830)).

After *Granfinanciera* and *Langenkamp*, entitlement to a jury trial clearly turns on whether the preference defendant files a proof of claim with the bankruptcy court. Because Petitioner filed a proof of claim in the TWA bankruptcy case, the Third Circuit's rejection of Petitioner's jury trial argument merely follows -- and presents no conflict with -- this Court's controlling decisions in *Granfinanciera* and *Langenkamp*.

Petitioner argues that the Third Circuit should have exempted certain types of proofs of claim from the *Langenkamp* rule. Pet. 7-8. Such arguments were raised and rejected in *Langenkamp* itself.[3] Moreover, Petitioner can point to no decision since *Granfinanciera* that has ever conferred a right to jury trial upon a preference defendant who has filed a proof of claim.[4] To the contrary, the decisions since *Granfinanciera* that address this issue are all in accord with the Third Circuit. *See First Fidelity Bank, N.A. v. Hooker Invs., Inc. (In re Hooker Invs., Inc.)*, 937 F.2d 833, 837-38 (2d Cir. 1991) (right to jury trial depends on whether a proof of claim is submitted against the estate); *Keller v. Blinder (In re Blinder Robinson & Co.)*, 135 B.R. 892, 896 (D. Colo. 1991) (right to jury trial depends upon whether a claim is submitted against the estate); *Rooker v. Levy (In re Levy)*, 122 B.R. 819, 820 (Bankr. N.D. Ga. 1991) (no right to

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[3] Petitioner's argument that the proof of claim it filed did not trigger the claims allowance process mirrors an argument already considered and rejected in *Langenkamp*. The *Langenkamp* respondents argued that their proofs of claim were merely an "administrative procedure" and that the equity power of the bankruptcy court was "never invoked." *See Answer In Opp'n To Pet. For Writ Of Cert. To The United States Court Of Appeals For The Tenth Circuit* for Respondent at 3, *Langenkamp v. Culp*, 498 U.S. 42 (1990) (No. 90-93). This Court did not accept that argument, and admonished the Tenth Circuit for having overlooked the "clear distinction" between those who had filed a claim and those who had not. 498 U.S. at ___, 111 S. Ct. at 332.

[4] The district court noted the complete dearth of authority supporting Petitioner's entitlement to a jury trial, stating that "Travellers is unable to direct the Court to any case where a similarly situated preference defendant has been deemed entitled to a jury trial after submission of a proof of claim ...." Pet. App. 21a.

jury trial where plaintiff in adversary proceeding filed a proof of claim against the estate); *Glen Eagle Square, Inc. v. Meehan-Weinmann, Inc. (In re Glen Eagle Square, Inc.)*, 132 B.R. 106, 111 (Bankr. E.D. Pa.) (filing a proof of claim has a "'preclusive effect'" on right to jury trial), *aff'd*, 132 B.R. 115 (E.D. Pa. 1991); *Citicorp N. Am., Inc. v. Finley (In re Washington Mfg. Co.)*, 133 B.R. 113, 117 (M.D. Tenn. 1991) (trustee has no right to jury trial in a fraudulent conveyance action where the creditor has filed a proof of claim); *W.E. Tucker Oil Co. v. Commercial Bank & Trust Co. (In re W.E. Tucker Oil Co.)*, 122 B.R. 719, 719-20 (W.D. Ark. 1990) (creditor's demand for jury trial denied where creditor filed a proof of claim); *Committee of Unsecured Creditors v. Memorial Mission Medical Ctr., Inc. (In re North Carolina Hosp. Ass'n)*, 112 B.R. 759, 760 n.1 (Bankr. E.D.N.C. 1990) (filing proof of claim constitutes waiver of right to jury trial even where claim is scheduled as unliquidated); *Gray v. Bill Ciaccia & Assocs. (In re Paris Indus. Corp.)*, 106 B.R. 344, 345 (Bankr. D. Me. 1989) (preference defendant who had submitted proof of claim was not entitled to a jury trial). *See also Mid Island Equities Corp. v. Barral (In re Barral)*, 139 B.R. 789, 790 (Bankr. S.D.N.Y. 1992); *Siemens Components, Inc. v. Choi (In re Choi)*, 135 B.R. 649, 652 (Bankr. N.D. Cal. 1991); *Splash v. Irvine Co. (In re Lion Country Safari, Inc.)*, 124 B.R. 566, 571 (Bankr. C.D. Cal. 1991); *Murray v. Prescott, Ball & Turben, Inc. (In re Chicago, Missouri & W. Ry. Co.)*, 124 B.R. 769, 771 (Bankr. N.D. Ill. 1991).

In *First Fidelity Bank, N.A. v. Hooker Investments, Inc. (In re Hooker Investments, Inc.)*, 937 F.2d 833 (2d Cir. 1991), the Second Circuit rejected contentions by secured creditors no different from Petitioner's argument here. It determined that:

> filing a proof of claim is not merely a means of providing information to the bankruptcy court, but is a means of invoking the bankruptcy court's equitable jurisdiction ... . [The secured creditor seeks] to preserve both its

> right to a jury trial .... [But, the secured creditor] offers no basis ... for disregarding the general rule of *Langenkamp* and *Granfinanciera* ... .

937 F.2d at 838 (citations omitted).

Petitioner argues that the Third Circuit decision is "irreconcilable" with *Dexter v. Gilbert (In re Kirchoff Frozen Foods, Inc.)*, 496 F.2d 84 (9th Cir. 1974), *Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159 (9th Cir. 1986), and *In re Eakin*, 154 F.2d 717 (2d Cir. 1946). Pet. 14-15. Those decisions do not address the right to jury trial and, in any event, predate *Granfinanciera* and *Langenkamp*. Similarly, Petitioner's attempt to portray the Third Circuit's decision as conflicting with the Tenth Circuit opinion in *Langenkamp* (Pet. 14) has no current significance. That portion of the Tenth Circuit decision pertaining to preference defendants who had filed proofs of claim was reversed by this Court in *Langenkamp*.[5]

B. The Third Circuit's Decision Does Not Conflict With Decisions Governing Entitlement To An Article III Forum In Bankruptcy Cases.

Petitioner also argues that even if Petitioner has no right to a jury trial, the district court was required to withdraw the reference of this preference action from the bankruptcy court so that it could be heard by an "Article III" federal district court. Pet. 12. The Third Circuit's rejection of this alternative argument (Pet. App. 10a n.5) creates no conflict with the decisions of this Court or other federal courts. None of this Court's Article III decisions has held

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[5] Because there is no conflict between this Court's decisions and the Third Circuit's decision rejecting Petitioner's jury demand, Petitioner attempts to inject a conflict on an issue not decided below. Petitioner argues that *if* Petitioner is entitled to a jury trial, the bankruptcy court cannot conduct one. Pet. 15 n.11. That issue was never reached by the Third Circuit or by the district court. Accordingly, this case is not an appropriate one in which to review it.

that a preference action in bankruptcy court against a creditor who has filed a proof of claim must be decided by a federal district court judge.

The application of Article III to bankruptcy cases had its genesis in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). There, this Court determined that Article III precluded the bankruptcy court from exercising jurisdiction over a state law contract action against a third party who had not filed a claim in the bankruptcy court. The Court's plurality opinion expressly distinguished Article III jurisdiction over such cases from the bankruptcy court's "traditional" jurisdiction over federal matters such as the manner in which the rights of debtors and creditors are adjusted. *Id.* at 71.

In subsequent decisions, this Court has preserved the distinction established in *Northern Pipeline* and confirmed the limited reach of its holding.[6] In *Granfinanciera*, this Court again distinguished between "'[t]he restructuring of debtor-creditor relations, which is at the core of federal bankruptcy power ... [and] state-created private rights, such as the right to recover contract damages ... .'" *Granfinanciera*, 492 U.S. at 56 n.12 (quoting *Northern Pipeline*, 458 U.S. at 71).

The restructuring of debtor-creditor relations occurs through the process of allowance and disallowance of claims. As this Court recognized in *Langenkamp*, once a creditor triggers the claims allowance process by filing a claim, that claim and any preference action against the creditor "become integral to the restructuring of the

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[6] *See Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 584 (1985) (*Northern Pipeline* "establishes *only* that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law ... .") (emphasis added); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 849 (1986) ("Our precedents also demonstrate, however, that Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court.") (citing *Thomas*, 473 U.S. at 583; *Crowell v. Benson*, 285 U.S. 22, 87 (1932)).

debtor-creditor relationship ... ." 498 U.S. at ___, 111 S. Ct. at 331.

Once Petitioner filed its proof of claim, Petitioner's claim and this preference action became a part of the process of restructuring debtor-creditor relations.[7] Accordingly, the Third Circuit's rejection of Petitioner's argument presents no conflict with this Court's application of Article III to state law contract actions asserted against those who have not filed a claim in bankruptcy court and are not involved in that process.

The Third Circuit's rejection of Petitioner's Article III challenge also creates no conflict among the circuits. Petitioner does not cite, and counsel for Respondent are unaware of, any decision requiring a district court to withdraw the reference of a preference action pending in bankruptcy court against a creditor who has filed a proof of claim.

This Court recently denied a petition for certiorari to review another decision reaching the same result as the Third Circuit here. In *Saker v. Luper (In re Holiday Towers)*, No. 91-3854, 1992 WL 107063 (6th Cir. May 15, 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 326 (1992), the Sixth Circuit held that Article III did not affect bankruptcy court jurisdiction to determine a secured creditor's claim for attorneys' fees and the validity of its lien. Like the Third Circuit, the Sixth Circuit applied the settled principle that "'[t]he restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be

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[7] Because a proof of claim alerts the court to a creditor's desire to participate in this process, the importance of the act of filing a proof of claim as it relates to the administration of a bankruptcy case cannot be understated. Under the Bankruptcy Code, the claims allowance process is initiated immediately upon the filing of a proof of claim, since a "claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). *See also Glen Eagle Square, Inc. v. Meehan-Weinmann, Inc. (In re Glen Eagle Square, Inc.)*, 132 B.R. 106, 112 (Bankr. E.D. Pa.) (the filing of a proof of claim is not a "mere procedural nicety"), *aff'd*, 132 B.R. 115 (E.D. Pa. 1991).

distinguished from the adjudication of state-created private rights'" under Article III. *Id.* at *3 (quoting *Northern Pipeline*, 458 U.S. at 71). Like the Third Circuit, the Sixth Circuit rejected the creditor's Article III challenge because the matter before it involved the restructuring of debtor-creditor relations. *See also Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1389-90 (2d Cir. 1990) (rejecting Article III challenge to adversary proceeding based on "crucial distinction" that, unlike the defendant in *Northern Pipeline*, creditor had "filed a proof of claim" and become a part of the bankrupty restructuring process).[8]

II. THE PRIOR DECISIONS OF THIS COURT APPLIED BY THE THIRD CIRCUIT HAVE CLEARLY RESOLVED THE QUESTIONS PRESENTED AND NO FURTHER REVIEW IS REQUIRED.

As demonstrated above, the Third Circuit's decision presents no conflict with the decisions of this Court or other federal courts. Those decisions make clear that by filing a proof of claim in bankruptcy court, a creditor relinquishes any right to insist that a preference action against him be tried to a jury in federal district court. This is but one application of the established rule that where a proof of claim has been filed, the creditor has "demand[ed] its allowance [and] must abide the consequences of that procedure." *Gardner v. New Jersey*, 329 U.S. 565, 573 (1947).

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[8] Petitioner wrongfully accuses the Third Circuit of confusing Seventh Amendment analysis with Article III analysis. Pet. 10. The Third Circuit did not characterize *Langenkamp* as an Article III case, but did rely on *Langenkamp*'s determination that once a creditor files a proof of claim, the claim and any preference action against the creditor become integral to the restructuring of the debtor-creditor relationship. Pet. App. 10a n.5. That core restructuring process does not depend on Article III.

Petitioner's argument that *Langenkamp* should be narrowed, so that a creditor could file certain types of "contingent" or "protective" proofs of claim without relinquishing a right to jury trial (Pet. 14-15), would erode the "clear distinction" established in *Langenkamp* and hopelessly confuse the straightforward treatment of jury demands under *Langenkamp*. In every adversary proceeding against a creditor, the bankruptcy court could assess the creditor's jury demand only by first analyzing the content of his proof of claim to determine whether it was a "protective" claim filed only for notice purposes, a "contingent" claim that might arise at some uncertain future date, or a "claim" that for some other reason was allegedly not a "claim against the estate."[9] Requiring such determinations would intrude unreasonably into the core process of restructuring debtor-creditor relationships.

Similarly, acceptance of Petitioners' Article III arguments presumably would mean that *all* preference actions filed against creditors of the debtor -- no matter how closely intertwined with the claims allowance process of

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[9] Petitioner falsely asserts that it is not a creditor. Pet. 9-10. Under the Bankruptcy Code,

> "creditor" means-
>
> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section ... 502(h) ... .

11 U.S.C. § 101(10).

Petitioner's contention that it has not asserted a claim against the estate is equally false. Pet. 7-8. Petitioner's alleged "secured claim," as well as its purported "contingent" unsecured claim, are each included in the Bankruptcy Code's definition of claim:

> "claim" means-
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, *contingent*, matured, unmatured, disputed, undisputed, legal, equitable, *secured*, or unsecured ... .

11 U.S.C. § 101(5)(A) (emphasis added).

the bankruptcy court -- would have to be adjudicated separately in federal district court. Given the already staggering caseload of the district courts, that would add years of delay at the expense of other creditors and would fragment the bankruptcy process.

Petitioner argues that the Third Circuit's decision deprives all preference defendants of the right to a jury trial in an Article III Court. Pet. 16. That argument ignores the fact that defendants in preference actions who wish to assert such rights can avoid injecting themselves into the claims allowance process by not filing a proof of claim. The *Langenkamp* rule and the Third Circuit's decision extend only to defendants who, like Petitioner, contemplate the desirability of participating in the claims allowance process and take the affirmative step of filing a proof of claim.[10]

This Court's existing precedents establish rules that are clear to courts and litigants. No lower courts have deviated from them. Further review of the arguments in the Petition is unnecessary.

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[10] Petitioner erroneously characterizes its proof of claim as a "defensive" notice of a future claim that Petitioner will have only if it loses this adversary proceeding. Actually, Petitioner's proof of claim states that Petitioner's claim arose during "1988 through 1990," prior to the filing of TWA's bankruptcy petition and this adversary proceeding; and seeks allowance of an alleged secured claim presently totalling over $13 million. Pet. App. 39a ¶¶ 3-5. Petitioner's proof of claim deliberately goes far beyond merely attempting to "defend" some future right to assert an unsecured claim.

Contrary to Petitioner's contention, the Third Circuit's decision does not require preference defendants to file proofs of claim. As an alleged secured creditor, Petitioner could have elected to rely solely upon whatever rights it is ultimately found to have in its collateral. Instead, Petitioner filed a proof of claim that asked the bankruptcy court either to allow its secured claim, or to permit Petitioner to share in a distribution from the estate as an unsecured creditor. Having chosen as a matter of litigation strategy to invoke the benefit of the claims allowance process of the bankruptcy court, Petitioner cannot now repudiate that process and the consequences of its choice. *See First Fidelity Bank*, 937 F.2d at 838-40.

III. THIS IS NOT AN APPROPRIATE CASE FOR REVIEW OF THE QUESTIONS PRESENTED.

Even if Petitioner's arguments presented issues otherwise worthy of review, the procedural posture of this case renders it unattractive for determination of the matters presented. The Third Circuit's decision is a denial of a mandamus petition and does not present the Court with a final judgment. Reversal of that decision would lead only to the Third Circuit having to address further procedural issues reserved in its opinion. Those issues include whether, apart from the merits, Petitioner would be entitled procedurally at this juncture to the extraordinary interlocutory remedy of mandamus (Pet. App. 6a); and whether Petitioner's arguments must be rejected in any event because its jury demand was untimely (Pet. App. 7a n.3).

Finally, TWA has filed a motion for partial summary judgment that remains pending in the bankruptcy court. That motion should determine which issues remain for trial, and may severely limit or even moot Petitioner's jury trial arguments.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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No. 92-1451

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,
v.
TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., and
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

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1. Respondent TWA addresses a different question from that presented. This case presents the question whether a preference action defendant's right to a jury trial is negated by a proof of claim that merely seeks to protect that defendant's right to assert the claim that will arise if it loses the preference action. Petitioner submits that such a proof of claim does *not* defeat its right to a jury trial, because it does *not* invoke the bankruptcy claims allowance process. TWA addresses instead the question whether a proof of claim that *does invoke* the claims allowance process negates the right to a jury trial. *Compare* Pet. at i *with* Opp. at i. Petitioner agrees that TWA's issue, which is irrelevant here, was decided by

Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989), and *Langenkamp v. Culp*, 498 U.S. 42, 111 S.Ct. 330 (1990), and thus does not warrant further review by this Court.

In the decisions cited by Travellers as being in conflict with the decision below, the courts of appeals have distinguished a proof of claim that asserts a present right to share in the bankruptcy estate from one that seeks to preserve a right that might arise from an action initiated by the debtor. The latter does not affect the defendant's right to adjudication by a jury in an Article III court. *See, e.g., Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159, 161-62 (9th Cir. 1986), and cases cited on page 15 of the Petition. TWA does not dispute the essence of those holdings; rather it erroneously asserts that they are inconsistent with *Granfinanciera* and *Langenkamp* and that they were necessarily overruled by those cases.

The operative question in determining entitlement to a jury trial is not whether a proof of claim has been filed but whether the creditor has invoked the equitable claims allowance process in which the right to a jury is inapplicable. *Granfinanciera*, 492 U.S. at 58; *Langenkamp*, 498 U.S. at —, 111 S.Ct. at 348. In contrast to the decision below, the Ninth and Second Circuit decisions cited by Travellers recognize that the rights established by Article III and the Seventh Amendment cannot be defeated by formalistic incantations. They are fundamental rights whose applicability depends on the nature of the rights and of the action at issue. If the rights at issue are private in nature, the litigants are entitled to an Article III court; if, in addition, the action is legal in nature, the litigants are entitled to a jury trial. *Granfinanciera*, 492 U.S. at 53-54. These important constitutional issues cannot turn on the mere presence of a proof of claim form.

Here, the claim reflected in Travellers' proof of claim form is against funds held by the Clerk of the United

States District Court for the Southern District of New York, not against the bankruptcy estate. Travellers thus does not assert a right to a share of the debtor's estate; it filed the proof of claim form merely to preserve its right to assert a claim against the estate if TWA prevails in the preference action. Since that protective proof of claim cannot invoke the claims allowance process until after the preference action has been fully litigated, it cannot affect Travellers' right to a jury trial in the preference action.[1]

2. TWA argues that if the proof of claim filed by Travellers invoked the claims allowance process, it may be adjudicated without regard to Article III. TWA refuses to acknowledge that this precise issue was reserved by the Court in *Granfinanciera*, 492 U.S. at 56 n.11 and that it was neither presented nor addressed in *Langenkamp*. This case presents an appropriate vehicle to resolve that important issue, which permeates bankruptcy litigation.

The line that must be drawn is the one that separates bankruptcy-related proceedings that involve public rights from those that involve private rights.[2] This Court in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), concluded that some bankruptcy-related proceedings must be adjudicated by an Article III court. Congress subsequently selected a num-

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[1] In a strained attempt to bring this case within *Langenkamp*, TWA contends that Travellers' proof of claim asserts a right to a share of the bankruptcy estate, because it seeks a distribution as a secured creditor (Opp. 12 n.10). But the proof of claim clearly states that the collateral is in the possession of the Clerk (Pet. 41a) and thus not property of the debtor's estate. *See* Pet. 7 n.5. As even the court of appeals recognized (Pet. 9a), Travellers has no present claim against property of the estate and seeks no distribution from the estate.

[2] As used here, "bankruptcy-related proceedings" include all proceedings arising under title 11, or arising in or related to cases under title 11 as defined in 28 U.S.C. §§ 1334 and 157.

ber of such bankruptcy-related proceedings, denominated them non-core, and declared that they must be adjudicated by an Article III court. *See, e.g.*, 28 U.S.C. §§ 157(b)(2), (d).[3] Almost all other bankruptcy-related proceedings were denominated as core and subjected to adjudication by the non-Article III bankruptcy judge. The Court has made clear, however, that Congress's arrangement is not dispositive. As recognized in *Granfinanciera*, preference actions and fraudulent conveyance actions, although denominated core under the statute, are nonetheless entitled to adjudication by an Article III court. 492 U.S. at 60-61. TWA has offered no reason to depart from that principle merely because the preference defendant has sought to preserve its right to assert a claim that will arise, if at all, only after the preference action has been fully litigated.

3. Contrary to TWA's assertion (Opp. 13), review of this case should not be affected by its interlocutory status. This Court has repeatedly granted certiorari to review interlocutory decisions that threaten to deprive litigants of the constitutional rights at stake here. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) (right to a jury trial); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959) (same); *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957) (right to trial by an Article III court).

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[3] Thus Congress itself has decided that not every proceeding involving the restructuring of debtor-creditor relations can be decided by a bankruptcy judge. Personal injury or wrongful death claims are preserved for determination by Article III judges. 28 U.S.C. § 157(b)(2). Likewise, claims requiring consideration of federal laws regulating interstate commerce must, on request, be decided by an Article III judge. *Id.* § 157(d). TWA's concern (Opp. at 12) that Article III judges will be overwhelmed by the specter of adjudicating preference actions is not only irrelevant in the context of the constitutional mandates here at issue, *Granfinanciera*, 492 U.S. at 63-64, it is also overstated.

CONCLUSION

For the foregoing reasons and the reasons stated in the Petition, this Court should grant a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Rule 15.7 of the Rules of this Court, petitioner invites the Court's attention to the newly decided case of *Germain v. Connecticut National Bank*, No. 92-5046, 61 U.S.L.W. 2598, 1993 WL 82702, 1993 U.S. App. Lexis 5815 (2d Cir. March 24, 1993), *suggestion for reh'g in banc pending*. In that case, the Second Circuit, in direct conflict with the Third Circuit decision addressed in this petition, concluded that the filing of a

proof of claim did not negate the parties' right to a jury trial in the debtor/trustee's action against the claimant unless "the resolution of the dispute in which a jury trial is sought . . . affect[s] the allowance of the creditor's claim." 1993 U.S. App. Lexis 5815 at *11.

In *Germain,* the trustee sued the debtor's primary lender, which had previously filed a claim against the bankruptcy estate, alleging several torts and breaches of contract. The bank objected to the trustee's demand for a jury trial, arguing, *inter alia,* that the right to a jury was irrelevant in an action against a creditor that had filed a proof of claim. The Second Circuit disagreed,

> [N]either precedent nor logic supports the proposition that either the creditor or the debtor automatically waives all right to a jury trial whenever a proof of claim is filed. For a waiver to occur, the dispute must be part of the claims-allowance process or affect the hierarchical reordering of creditors' claims. Even there, the right to a jury trial is lost not so much because it is waived, but because the legal dispute has been transformed into an equitable issue.

Id. at *22. This stands in stark contrast to the decision below, in which the Third Circuit held that the filing of *any* proof of claim works a waiver of the party's right to a jury trial.

The Second Circuit's extensive discourse on the public rights/private rights differentiation posed by the Article III issue also diverges markedly from the Third Circuit's perfunctory treatment, further highlighting the confusion that prevails in the courts of appeals on this important constitutional issue.

In sum, this new decision confirms that the questions presented in this petition continue to divide the courts of appeals and that there is an urgent need for further guidance from this Court.

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION FOR RESPONDENT TRANS WORLD AIRLINES, INC.

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION FOR RESPONDENT TRANS WORLD AIRLINES, INC.

Petitioner has submitted a supplemental brief suggesting that *Germain v. Connecticut National Bank*, No. 92-5046, 1993 U.S. App. LEXIS 5815 (2d Cir. Mar. 24, 1993), *suggestion for reh'g in banc pending*, supports the grant of its petition for certiorari. Petitioner is wrong. *Germain* does not involve the right to jury trial in preference actions and presents no conflict with the Third Circuit's application of *Langenkamp v. Culp*, 498 U.S. 42, 111 S. Ct. 330 (1990).

Germain involved a lender liability action brought by a bankruptcy trustee. At issue was whether the trustee's right to a jury trial in the lender liability action was affected by the defendant's filing of a proof of claim. The Second Circuit found that resolution of the lender liability action could have "no effect whatever" on the allowance of the defendant's claim, and that the lender liability

action therefore was not part of the equitable claims allowance process. 1993 U.S. App. LEXIS 5815 at *9-10.

The Second Circuit in *Germain* distinguished the action before it from preference actions controlled by *Langenkamp*. It emphasized that preference actions do affect the allowance of a creditor's claim, and are part of the claims allowance process. 1993 U.S. App. LEXIS 5815 at *10 (citing 11 U.S.C. § 502(d), and observing that "before a claim may be allowed, a court must resolve any preference issues that the trustee might raise"). *Germain* therefore supports, and presents no conflict with, the Third Circuit's holding that *Langenkamp* controls Petitioner's jury demand in this preference action.[1]

Similarly, the determination in *Germain* that a lender liability action involves "private rights" unrelated to the bankruptcy claims allowance process has nothing to do with this preference action. As this Court already determined in *Langenkamp*, preference actions against defendants who have filed proofs of claim are intertwined with the bankruptcy claims allowance process. *See* 498 U.S. at____, 111 S. Ct. at 331. The Third Circuit correctly applied *Langenkamp* to this preference action, and was not required to analyze the impact of other types of actions on the bankruptcy restructuring process.

Petitioner's conclusory assertions about confusion and division in the courts of appeals do not withstand scrutiny. The Third Circuit's decision correctly applies the clear and controlling precedents of this Court, and comports fully with the decisions of other federal courts. No further guidance is needed on the questions set forth in the Petition.

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[1] Petitioner's characterization of the Third Circuit's decision as applying to *"any* proof of claim" (Supp. Br. at 2) is inaccurate, and creates no conflict with *Germain*. The Third Circuit merely applied the *Langenkamp* rule that filing a proof of claim precludes a jury trial in a preference action, and made no broad pronouncements concerning the effect of filing a proof of claim on other types of actions.

CONCLUSION

For the foregoing reasons as well as those contained in Respondent's brief in opposition, the petition for a writ of certiorari should be denied.

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